



# California Regulatory Notice Register

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NOVEMBER 14, 2008

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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## PROPOSED ACTION ON REGULATIONS

*Information contained in this document is published as received from agencies and is not edited by Thomson Reuters.*

### TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303, and 87304 of the Government Code to review proposed conflict of interest codes, will review the proposed/amended conflict of interest codes of the following:

#### CONFLICT OF INTEREST CODE

##### AMENDMENT

MULTI-COUNTY: Galt Joint Union High School District

A written comment period has been established commencing on **November 14, 2008**, and closing on **December 29, 2008**. Written comments should be directed to the Fair Political Practices Commission, Attention Ivy Branaman, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict of interest code(s) will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized representative requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director of the Commission will review the above-referenced conflict of interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director of the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict of interest code(s). Any written comments must be received no later than **December 29, 2008**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

#### COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

#### EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

#### AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict of interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

#### REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict of interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

#### CONTACT

Any inquiries concerning the proposed conflict of interest code(s) should be made to Ivy Branaman, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

**AVAILABILITY OF PROPOSED  
CONFLICT OF INTEREST CODES**

Copies of the proposed conflict of interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to Ivy Branaman, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

**TITLE 5. SUPERINTENDENT OF  
PUBLIC INSTRUCTION**

**NOTICE OF PROPOSED RULEMAKING**

**AMENDMENT TO CALIFORNIA CODE OF  
REGULATIONS, TITLE 5, REGARDING  
SPECIAL EDUCATION — DUTIES OF  
CONTRACTORS OR AGENCIES RELATED  
TO CONDUCTING MEDIATION OR DUE  
PROCESS HEARINGS**

[Notice published November 14, 2008]

**NOTICE IS HEREBY GIVEN** that the State Superintendent of Public Instruction (SSPI) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

**TWO PUBLIC HEARINGS**

California Department of Education (CDE) staff, on behalf of the SSPI, will hold two public hearings. The first public hearing will be held in Northern California on **January 13, 2009**, at **10:00 a.m.** at 1430 N Street, Room 1101, Sacramento, California. The second public hearing will be held in Southern California on **January 15, 2009**, at **11:00 a.m.** at the Orange County Office of Education, 200 Kalmus Drive, Building B, Vision Room, Costa Mesa, California. The rooms are wheelchair accessible. At the hearings, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The SSPI requests, but does not require, that persons who make oral comments at the public hearing also submit a written summary of their statements. No oral statements will be accepted subsequent to this public hearing.

**WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to:

Debra Strain, Regulations Coordinator  
LEGAL DIVISION  
California Department of Education  
1430 N Street, Room 5319  
Sacramento, CA 95814

Comments may also be submitted by facsimile (FAX) at 916-319-0155 or by e-mail to [regcomments@cde.ca.gov](mailto:regcomments@cde.ca.gov). Comments must be received by the Regulations Coordinator prior to **5:00 p.m. on January 15, 2009**.

**AVAILABILITY OF CHANGED  
OR MODIFIED TEXT**

Following the public hearing and considering all timely and relevant comments received, the SSPI may adopt the proposed regulations substantially as described in this Notice or may modify the proposed regulations if the modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified regulation will be available for 15 days prior to its adoption from the Regulations Coordinator and will be mailed to those persons who submit written comments related to this regulation, or who provide oral testimony at the public hearing, or who have requested notification of any changes to the proposed regulations.

**AUTHORITY AND REFERENCE**

Authority: Sections 56504.5, Education Code.

References: Sections 56500.1, 56500.3, 56501, 56501.5, 56504.1, 56504.5, 56505, 56505.1, and 56506, Education Code; 20 USC 1232g, 1400, 1412, 1415, 3601; 34 CFR 300.500, 300.506, and 300.511; California State Contracting Manual section 9.16; Codes of Professional Responsibility; Ethics Standards in Business, Health, and Law 4<sup>th</sup> edition by Rena A. Gorlin (1999).

**INFORMATIVE DIGEST/POLICY STATEMENT  
OVERVIEW**

Education Code section 56504.5 requires the CDE to enter into a contract with a nonprofit organization or entity or an interagency agreement with another state agency to conduct mediation conferences and due process hearings in accordance with sections 300.506 and 300.511 of Title 34 of the Code of Federal Regulations. The purpose of these regulations is to identify the duties of the contractor or agency with whom the CDE has entered into a contract or interagency agreement pursuant to Education Code section 56504.5.

## DISCLOSURES REGARDING THE PROPOSED ACTION

*The SSPI has made the following initial determinations:*

Mandate on local agencies and school districts: None

Cost or savings to any state agency: None

Costs to any local agencies or school districts for which reimbursement would be required pursuant to Part 7 (commencing with section 17500) of division 4 of the Government Code: None

Other non-discretionary costs or savings imposed on local educational agencies: None

Costs or savings in federal funding to the state: None

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None

Cost impacts on a representative private person or businesses: The SSPI is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of these regulations will not 1) create or eliminate jobs within California; 2) create new businesses or eliminate existing businesses within California; or 3) affect the expansion of businesses currently doing business within California.

Effect on housing costs: None

Effect on small businesses: The proposed action will not affect small business because the scope of these regulations is limited to state agencies and nonprofit organizations.

## CONSIDERATION OF ALTERNATIVES

The SSPI must determine that no reasonable alternative he considered or that has otherwise been identified and brought to his attention, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

The SSPI invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

## CONTACT PERSONS

Inquiries concerning the content of this regulation should be directed to:

Jill Rice, Deputy General Counsel  
Legal Division  
California Department of Education  
1430 N Street, 5<sup>th</sup> Floor  
Sacramento, CA 95814  
Telephone: 916-319-0860

Inquiries concerning the regulatory process may be directed to the Regulations Coordinator or Connie Diaz, Regulations Analyst, at 916-319-0860.

## INITIAL STATEMENT OF REASONS AND INFORMATION

The SSPI has prepared an Initial Statement of Reasons for the proposed regulation and has available all the information upon which the proposal is based.

## TEXT OF PROPOSED REGULATION AND CORRESPONDING DOCUMENTS

Copies of the exact language of the proposed regulation, the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Regulations Coordinator. These documents may also be viewed and downloaded from the CDE's Web site at <http://www.cde.ca.gov/re/lr/rr/>.

## AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the Regulations Coordinator.

You may obtain a copy of the Final Statement of Reasons once it has been prepared, by making a written request to the Regulations Coordinator.

## REASONABLE ACCOMMODATION FOR ANY INDIVIDUAL WITH A DISABILITY

Pursuant to the *Rehabilitation Act of 1973*, the *Americans with Disabilities Act of 1990*, and the *Unruh Civil Rights Act*, any individual with a disability who requires reasonable accommodation to attend or participate in a public hearing on proposed regulations, may request assistance by contacting Jill Rice, Deputy General Counsel, Legal Office, 1430 N Street, 5<sup>th</sup> Floor, Sacramento, CA, 95814; telephone, 916-319-0860. It is recommended that assistance be requested at least two weeks prior to the hearing.



**TITLE 10. DEPARTMENT OF  
INSURANCE**

**STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
45 Fremont Street, 24th Floor  
San Francisco, California 94105**

**NOTICE OF PROPOSED ACTION AND  
NOTICE OF PUBLIC HEARING**

**Repeal of Disability Income Insurance Benefit  
Reduction Regulations Article 2.2  
November 4, 2008  
REG-2008-00033**

**SUBJECT OF HEARING**

Notice is hereby given that a public hearing will be held regarding the repeal of California Code of Regulations ("CCR"), Title 10, Chapter 5, Subchapter 2 Policy Forms and Other Documents, Article 2.2. Limits on Benefit Reductions in Group Disability Income Insurance Policies, Sections 2232.45.1 (Authority and Purpose), 2232.45.2 (Benefit Reductions Shall Not Be Based on Involuntary Retirement), 2232.45.3 (Benefit Reductions Shall Not Be Based on Estimated Worker's Compensation Temporary Disability Benefits Not Actually Received by the Insured), 2232.45.4 (Benefit Reductions Shall Not Be Based on Worker's Compensation Permanent Disability), and 2232.45.5 (Benefit Reductions Based on Earnings Received for Work Performed While Disabled).

**AUTHORITY AND REFERENCE**

The Insurance Commissioner proposes the repeal of the new Title 10, Chapter 5, Subchapter 2, Article 2.2 Limits on Benefit Reductions in Disability Income Insurance Policies, pursuant to the authority set forth below:

Section 2232.45.1: Authority cited: Section 790.10, Insurance Code; *CalFarm Ins. Co. v. Deukmejian*, (1989) 48 Cal.3d 805; *20<sup>th</sup> Century Ins. Co. v. Garamendi* (1994) 8 Cal.4<sup>th</sup> 216. Reference: Sections 790.02, 790.03, Insurance Code.

Section 2232.45.2: Authority cited: Section 790.10, Insurance Code; *CalFarm Ins. Co. v. Deukmejian*, (1989) 48 Cal.3d 805; *20<sup>th</sup> Century Ins. Co. v. Garamendi* (1994) 8 Cal.4<sup>th</sup> 216. Reference: Sections 790.02, 790.03, Insurance Code; *Kalvinskas v. California Institute of*

*Technology* (9<sup>th</sup> Cir. 1996) 96 F.3d 1305; *Gruenberg v. Aetna Insurance Company* (1973) 9 Cal.3d 566; *Smith v. Alum Rock Union Elementary School District* (1992) 6 Cal. App.4<sup>th</sup> 1651.

Section 2232.45.3: Authority cited: Section 790.10, Insurance Code; *CalFarm Ins. Co. v. Deukmejian*, (1989) 48 Cal.3d 805; *20<sup>th</sup> Century Ins. Co. v. Garamendi* (1994) 8 Cal.4<sup>th</sup> 216. Reference: Sections 790.02, 790.03, Insurance Code; *Silberg v. Cal. Life Ins. Co.* (1974) 11 Cal. 3d 452.

Section 2232.45.4: Authority cited: Section 790.10, Insurance Code; *CalFarm Ins. Co. v. Deukmejian*, (1989) 48 Cal.3d 805; *20<sup>th</sup> Century Ins. Co. v. Garamendi* (1994) 8 Cal.4<sup>th</sup> 216. Reference: Sections 790.02, 790.03, Insurance Code; *Erreca v. Western States Life Insurance Co.* (1942) 19 Cal.2d 388; *Russell v. Bankers Life Co.* (1975) 46 Cal. App.3d 405; *Canova v. N.L.R.B.* (1983) 708 F.2d 1498.

Section 2232.45.5: Authority cited: Section 790.10, Insurance Code; *CalFarm Ins. Co. v. Deukmejian*, (1989) 48 Cal.3d 805; *20<sup>th</sup> Century Ins. Co. v. Garamendi* (1994) 8 Cal.4<sup>th</sup> 216. Reference: Sections 790.02, 790.03, Insurance Code; *Gruenberg v. Aetna Insurance Company* (1973) 9 Cal.3d 566.

**HEARING DATE AND LOCATION**

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the repeal of the regulations described above as follows:

**Date and time: January 8, 2009  
10:00 am\***

**Location: Department of Insurance Hearing  
Room  
45 Fremont Street, 22<sup>nd</sup> Floor  
San Francisco, CA 94105**

\*The hearing will continue on the date noted until all testimony has been completed or 5:00 p.m., whichever is earlier.

**PRESENTATION OF WRITTEN AND/OR ORAL  
COMMENTS; CONTACT PERSONS**

All persons are invited to present oral and/or written comments at the scheduled public hearing. Written comments should be addressed to the contact person:

Nancy Hom, Staff Counsel III  
California Department of Insurance  
45 Fremont Street, 24th Floor  
San Francisco, CA 94105  
Telephone: (415) 538-4144

Questions regarding procedure, the hearing, comments, or the substance of the proposed action should be addressed to the contact person listed above. If she is unavailable, inquiries may be addressed to the backup contact person:

Vanessa Davenport, Staff Counsel III  
California Department of Insurance  
45 Fremont Street, 24th Floor  
San Francisco, CA 94105  
Telephone: (415) 538-4423

#### DEADLINE FOR WRITTEN COMMENTS

All persons are invited to submit written comments on the proposed repeal of the regulations during the public comment period. **The public comment period will end at 5:00 p.m. on January 8, 2009.** All written comments, whether submitted at the hearing, or by U.S. mail, or by e-mail or facsimile, must be received by the Insurance Commissioner, c/o the contact person at the address listed above, no later than **5:00 p.m. on January 8, 2009.** Any written materials received after that time will not be considered.

#### COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: [homn@insurance.ca.gov](mailto:homn@insurance.ca.gov). The Commissioner will also accept written comments transmitted by facsimile provided they are sent to the attention of the contact person at the following facsimile number: (415) 904-5729. **Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the January 8, 2009 at 5:00 p.m. deadline for written comments.**

#### ACCESS TO HEARING ROOMS

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person(s) for the hearing in order to make special arrangements, if necessary.

#### ADVOCACY OR WITNESS FEES

Persons or groups representing the interests of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of Title 10 of the California Code of Regulations, in connection with their participation in this matter. Interested persons should contact the Office of the Public Advisor at the following address to inquire about the appropriate procedures:

California Department of Insurance  
Office of the Public Advisor  
300 Capitol Mall, 17<sup>th</sup> Floor  
Sacramento, CA 95814  
(916) 492-3559

A copy of any written materials submitted to the Public Advisor regarding this rulemaking must also be submitted to the contact person for this hearing. Please contact the Office of the Public Advisor for further information.

#### INFORMATIVE DIGEST

#### POLICY STATEMENT OVERVIEW

Since adoption of these sections earlier this year, the Commissioner has reevaluated the issue of offset clauses in the disability insurance market. Based upon this review he has concluded that the issue is best addressed through enforcement proceedings pursuant to section 790.06 of the Insurance Code when and if he discovers individual insurers employing illegal offset clauses in their disability insurance policies. Any such enforcement action will be based upon existing state and federal statutory and common law, therefore the regulations are not necessary and are being repealed.

#### SUMMARY OF EXISTING LAW; EFFECT OF PROPOSED ACTION

##### Repeal of Article 2.2

California Code of Regulations Title 10, Chapter 5, Subchapter 2, titled "Policy Forms and Other Documents," contains regulations which govern the filing and contents of certain forms required to be filed with the Department of Insurance. Article 2.2 of this Subchapter establishes Limits on Benefit Reductions in Group Disability Income Insurance Policies. This rulemaking repeals Article 2.2.

#### DOCUMENTS INCORPORATED BY REFERENCE

The proposed repeal of the regulations does not incorporate any documents by reference.

**MANDATES ON LOCAL AGENCIES  
OR SCHOOL DISTRICTS**

The proposed repeal of the regulations does not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with section 17500) of Division 4 of the Government Code would require reimbursement.

**COST OR SAVINGS TO ANY STATE OR  
LOCAL AGENCY OR SCHOOL DISTRICT  
OR IN FEDERAL FUNDING**

The Commissioner has determined that the proposed repeal of the regulations will result in no cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

**ECONOMIC IMPACT ON BUSINESSES  
AND THE ABILITY OF CALIFORNIA  
BUSINESSES TO COMPETE**

The Commissioner has made an initial determination that repeal of the proposed regulations may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The types of businesses that may be affected are insurance companies. Insurance companies authorized to transact disability insurance in California may incur some costs as a result of changing their internal procedures to ensure compliance with state and federal statutory and common law governing the use of offset clauses. The Commissioner has not considered other proposed alternatives that would lessen any adverse economic impact on business and invites interested parties to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses;
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses;
- (iii) The use of performance standards rather than prescriptive standards;
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

**POTENTIAL COST IMPACT ON PRIVATE  
PERSONS OR ENTITIES/BUSINESSES**

The Commissioner has determined that there is likely to be some cost impact for insurance companies in reasonable compliance with the proposed repeal of the regulations, although the extent of the cost impact is unknown. The cost impact would include the cost of evaluating policy forms to ensure that they comply with state and federal statutory and common law governing the use of offset clauses.

**EFFECT ON JOBS AND BUSINESSES  
IN CALIFORNIA**

The Commissioner is required to assess any impact the proposed repeal of the regulations may have on the creation or elimination of jobs within the State of California as well as the creation of new businesses, the elimination of existing businesses, and the expansion of businesses currently doing business within the State. The Commissioner does not foresee that the proposed repeal of the regulations will have an impact on any of the above but invites interested parties to comment on this issue.

**IMPACT ON HOUSING COSTS**

The matters proposed herein will have no significant effect on housing costs.

**ALTERNATIVES**

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purposes for which the repeal of the regulations is proposed or would be as effective as and less burdensome to affected private persons than the proposed repeal of the regulations. The Commissioner invites public comment on alternatives to repealing the regulations.

**IMPACT ON SMALL BUSINESS**

The Commissioner has determined that the proposed repeal of the regulations will not affect small businesses. Pursuant to Government Code section 11342.610(b)(2), insurers are not small businesses.

**COMPARABLE FEDERAL LAW**

There are no existing federal regulations or statutes comparable to the regulations which the Commissioner proposes to repeal.



TEXT OF REGULATIONS TO BE REPEALED  
AND INITIAL STATEMENT OF REASONS

The Department has prepared an Initial Statement of Reasons that sets forth the reasons for the proposed repeal of the regulations. Upon request, the Initial Statement of Reasons will be made available for inspection and copying. Requests for the Initial Statement of Reasons or questions regarding this proceeding should be directed to the contact person listed above. Upon request, the Final Statement of Reasons will be made available for inspection and copying once it has been prepared. Requests for the Final Statement of Reasons should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the regulations that the Department of Insurance proposes to repeal, the Initial Statement of Reasons, the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available for inspection and copying by prior appointment at 45 Fremont Street, 24th Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

AUTOMATIC MAILING

A copy of the regulations to be repealed and this Notice (including the Informative Digest, which contains the general substance of the regulations to be repealed) will automatically be sent to all persons on the Insurance Commissioner's mailing list.

WEBSITE POSTINGS

Documents concerning this proceeding will be available on the Department's website. The documents shall include the regulations which the Department of Insurance proposes to repeal, the Notice of Hearing and Informative Digest, the Initial Statement of Reasons, and, when it has been prepared, the Final Statement of Reasons. To access documents concerning this proceeding, go to <http://www.insurance.ca.gov>. Find the link "QUICK LINKS" on the right side of the screen. Under "For Insurers" under the "QUICK LINKS" link, select "Regulations." Click on the "Proposed Regulations" link. Select "Search for Proposed Regulations." When the search field appears, enter "REG-2008-00033" (the Department's file number for this regulation repeal proceeding).

MODIFIED LANGUAGE

If the regulations repealed by the Department differ from those which have originally been made available but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of repeal. Interested persons should request a copy of these regulations prior to their repeal from the contact person listed above.

**TITLE 14. DEPARTMENT OF  
CONSERVATION**

NOTICE OF PROPOSED ACTION

BEVERAGE MANUFACTURER AND  
DISTRIBUTOR  
PERMANENT REGULATIONS

TITLE 14. NATURAL RESOURCES  
DIVISION 2. DEPARTMENT OF CONSERVATION  
CHAPTER 5. DIVISION OF RECYCLING

NOTICE IS HEREBY GIVEN that the Department of Conservation (Department), Division of Recycling (Division) proposes to adopt amendments to the California Code of Regulations (CCR). Commencing with Subchapter 3, Chapter 5, Division 2, Title 14 of the CCR, the Division will propose permanent regulations, after the consideration of all comments, objections or recommendations. The proposed amendments are as follows:

SUBCHAPTER 3. MANUFACTURERS

Article 3. Accounting and Reporting Requirements  
for Beverage Manufacturers

§ 2245. PAYMENTS.

Original subsection 2245(a): This subsection has been deleted. This subsection is no longer necessary because the payment due date is in statute (Section 14575(h)) and the report due date is in Section 2240 of the regulations.

Subsection (a): has been added to the first paragraph of Section 2245. This revision is necessary in order to be able to reference this paragraph.

Subsection 2245(c): This subsection has been deleted. The deletion of this subsection will give beverage manufacturers the option of making their processing fee

payments separately from filing their processing fee reports.

## SUBCHAPTER 4. DISTRIBUTORS

### Article 1. Distributor Requirements

#### § 2320. PAYMENTS

Subsection 2320(e): This subsection has been amended to delete the reference to “subsection (e)” and add the correct reference to Section 14574(a) of the Act for the calculation of the administrative fee. This subsection has also been amended to delete the last sentence. The deletion of this sentence will give distributors the option of making their redemption payments separately from filing their distributor reports.

#### INFORMATION IS AVAILABLE UPON REQUEST

Copies of the text, the express terms of the proposed action, the initial statement of reasons, and all of the information upon which this proposal is based are available upon request and at our website: [www.conservation.ca.gov](http://www.conservation.ca.gov). The rulemaking file is available to the public for review during normal business hours at the Division of Recycling, 801 “K” Street, 19th Floor, Sacramento, California. Please contact the agency contact person, Karen Denz, at (916) 322-1899. General or substance questions regarding this file may also be directed to Karen Denz. The backup agency contact person for this rulemaking file is Cheryl Dubose, who may be contacted at (916) 323-0728. Any technical inquiries shall be referred to the appropriate staff to ensure a prompt response.

#### SUBMITTING WRITTEN COMMENTS

The written comment period permits any interested person, or their authorized representative, to submit written comments addressing the proposed amendments to the Department. Written comments, which offer a recommendation and/or objection, or support the proposed amendment, should indicate the amended section to which the comment or comments are directed. Written comments should be sent to the Department and received before the close of the public comment period, no later than 5:00 p.m. on December 29, 2008. Additionally, we request that written comments reference a subsection or section of the proposed action. Written comments received by the Department after the close of the public comment period will not be responded to in the rulemaking file. Submit your written

comments to: Karen Denz, Beverage Manufacturer and Distributor Permanent Regulations, Department of Conservation, Division of Recycling, 801 “K” St., MS 19-02, Sacramento, CA 95814. During the 45-day comment period, written comments may also be E-mailed to: [DORRegulations@consrv.ca.gov](mailto:DORRegulations@consrv.ca.gov), or faxed to (916) 327-8668.

#### PUBLIC HEARING

A public hearing has not been scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period.

#### AVAILABILITY OF MODIFIED TEXT

Following the written comment period, and the hearing, if one is held, the department may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the full modified text with the changes clearly indicated shall be made available to the public for at least 15 days prior to the date on which the department adopts the resulting regulations. Requests for copies of any modified regulations should be addressed to the department contact person identified in this notice. The department will accept written comments on the modified regulations for 15 days after the date on which they are first made available to the public.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Under the existing law, the California Beverage Container Recycling and Litter Reduction Act (Act) encourages recycling of specific beverage containers and the reduction of littered beverage containers along the State’s highways. Under this Act, the Department, through the Division, is responsible for administering the Act and protecting the integrity of the California Beverage Container Recycling Fund (Fund).

In June 2007, the Department of Conservation, Division of Recycling initiated the Division of Recycling Integrated Information System (DORIIS) project. This project will improve the management processes for the Division’s workflow, document tracking, financial reporting, participant tracking, audits and investigations, education and outreach and allow the Division to provide better customer service. DORIIS is a free, Internet-based tool for the recycling community. DORIIS will improve business processes, eliminate duplicative

data entry, provide program participants with timely and accurate information and improved data analysis and reporting. This online system will also reduce paper use. DORIIS is a Web-based tool that can be accessed from any computer with an Internet browser.

As a result of DORIIS, the Division needs to amend the regulations to allow beverage manufacturers and distributors to file their reports separately from their payments. DORIIS will allow them to pay by electronic funds transfer and to report electronically; it is not necessary that these two functions happen simultaneously.

The Division will continue to allow program participants to submit paper copies of all required documents and to send payments or receive payments by mail indefinitely.

#### AUTHORITY

These regulations are submitted pursuant to the Department's authority under Public Resources Code Sections, 14530.5(b) and 14536.

#### REFERENCE

Public Resources Code Sections, 14506, 14530.5, 14561, 14572.5, 14574 and 14575 (h).

#### DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: The Department has determined that adoption of these proposed regulations does not impose any new mandates on local agencies or local school districts.

Cost or savings to any state agency: No savings or additional expenses to state agencies are identified because the implementation of the statute is financed by the beverage container recycling program itself.

Costs to any local agency or school district which must be reimbursed in accordance with Government Code §§17500 through 17630: The Department has determined that the adoption of these proposed regulations does not impose any additional cost obligations on local agencies or on local school districts.

Other non-discretionary costs or savings imposed upon local agencies: No other non-discretionary costs or savings to local agencies have been identified.

Costs or savings in federal funding to the State: No costs or savings in federal funding to the state have been identified.

Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: The Department has determined that no

significant impact to California businesses will result from the adoption of this proposed regulatory language. These proposed regulations serve to clarify and make specific existing statutory requirements.

Potential cost impact on private persons or directly affected businesses: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Creation or elimination of jobs in California: The Department has determined that the adoption of these regulations will not:

- Create or eliminate jobs within California;
- Create new nor eliminate existing businesses within California;
- Expand businesses currently doing business in California.

Significant effect on housing costs: The Department has determined that the adoption of these regulations will have no significant effect on housing costs.

Effects on small businesses: The Department has determined that the adoption of these proposed regulations will not affect small businesses. These proposed regulations do not mandate actions upon private persons or businesses.

#### CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative that it considers or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. The Department has not identified any adverse impacts resulting from these proposed regulations.

#### FINAL STATEMENT OF REASONS

A copy of the final statement of reasons may be obtained, when it becomes available, from the agency contact person or backup contact person identified in this notice.

#### ACCESSING INFORMATION REGARDING THIS FILE ON THE DEPARTMENT OF CONSERVATION WEBSITE

The text of the proposed regulations, the Notice of Proposed Action, the Initial Statement of Reasons and the Final Statement of Reasons, when available for review, will be on the Department of Conservation website at: [www.conservation.ca.gov](http://www.conservation.ca.gov).

**TITLE 15. DEPARTMENT OF  
CORRECTIONS AND REHABILITATION**

**NOTICE OF ADOPTION OF  
EMERGENCY REGULATIONS**

**California Code of Regulations  
Title 15, Crime Prevention and Corrections  
Department of Corrections and Rehabilitation**

**NOTICE IS HEREBY GIVEN** that the Secretary of the California Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code Section 12838.5, Penal Code (PC) Section 5058, and the rulemaking authority granted by PC Section 5058.3, in order to implement, interpret and make specific PC Section 5054, proposes to amend Sections 3000, 3375, 3376.1, and 3379 of the California Code of Regulations (CCR), Title 15 concerning inmate transfers — California Out of State Facility (COCF).

**PUBLIC HEARING**

Date and Time: December 30, 2008 — 9:00 a.m. to 11:00 a.m.  
Place: Corrections Standards Authority  
Large Conference Room  
660 Bercut Drive, West Entrance  
Sacramento, CA 95811  
Purpose: To receive comments about this action.

**PUBLIC COMMENT PERIOD**

The public comment period will close, December 30, 2008, at 5:00 p.m. Any person may submit public comments in writing (by mail, by fax, or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the CDCR, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916) 341-7366; or by e-mail at [RPMB@cdcr.ca.gov](mailto:RPMB@cdcr.ca.gov) before the close of the comment period.

**CONTACT PERSON**

Please direct any inquiries regarding this action to:

**Timothy M. Lockwood, Chief  
Regulation and Policy Management Branch  
Department of Corrections and Rehabilitation  
P.O. Box 942883, Sacramento, CA 94283-0001  
Telephone (916) 341-7390**

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

**Kelly Medina, PAII  
Regulation and Policy Management Branch  
Telephone (916) 341-7326**

Questions regarding the substance of the proposed regulatory action should be directed to:

**Michele Gonzalez, CCIII  
Division of Adult Institutions — COCF  
Telephone (916) 464-3808**

**LOCAL MANDATES**

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Government Code Section 17561.

**FISCAL IMPACT STATEMENT**

- Cost to any local agency or school district that is required to be reimbursed: *None*
- Cost or savings to any state agency: *No fiscal impact in current State Fiscal Year 07/08. Any minor costs associated with these regulations will be able to be absorbed within CDCR's existing budget and resources.*
- Other nondiscretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

**EFFECT ON HOUSING COSTS**

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

**COST IMPACTS ON REPRESENTATIVE  
PRIVATE PERSONS OR BUSINESSES**

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.



**SIGNIFICANT STATEWIDE ADVERSE  
ECONOMIC IMPACT ON BUSINESS**

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

**EFFECT ON SMALL BUSINESSES**

The Department has determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse economic impact on small business because they are not affected by the internal management of state prisons.

**ASSESSMENTS OF EFFECTS ON  
JOB AND/OR BUSINESS CREATION,  
ELIMINATION OR EXPANSION**

The Department has determined that the proposed regulation will have no effect on the creation of new, or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California.

**CONSIDERATION OF ALTERNATIVES**

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons, than the proposed regulatory action. Interested persons are accordingly invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

**AVAILABILITY OF PROPOSED TEXT AND  
INITIAL STATEMENT OF REASONS**

The Department has prepared, and will make available, the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, ISOR, and Notice of Proposed Action will also be made available on the Department's website <http://www.cdcr.ca.gov>.

**AVAILABILITY OF THE FINAL  
STATEMENT OF REASONS**

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the Department's contact person.

**AVAILABILITY OF CHANGES  
TO PROPOSED TEXT**

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this Notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**INFORMATIVE DIGEST/POLICY STATEMENT  
OVERVIEW**

PC Section 5000 provides that commencing July 1, 2005, any reference to the Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations.

PC Section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections, in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC Section 5054 provides that commencing July 1, 2005, the supervision, management, and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR.

PC Section 5058 authorizes the Director to prescribe and amend regulations for the administration of prisons.

PC Section 5058.3 authorizes the Director to adopt, amend, or repeal emergency regulations conducted pursuant to Government Code Section 11340.

In this regulatory action, the Secretary proposes to amend regulatory provisions pertaining to the inmate transfers, California Out of State Facility which are set forth in CCR, Title 15, Section 3379 as follows:

- This action amends provisions governing inmate transfers. These regulations establish rules governing the transfer of CDCR inmates to



California Out of State Facilities (COCF) as well as the basic fundamental rights and due process to be afforded to an inmate while housed in a COCF. New language shall also establish and clarify the ability of staff to comply with the CDCR objective of housing inmates in the least restrictive security level commensurate with an inmate's need for supervision while at the same time address the security needs of those inmates who are transferred to and housed in a COCF. Additionally, language is adopted to establish clearly defined criteria, due process, and a priority transfer order as outlined in Assembly Bill 900 and the Governor's State of Emergency Proclamation for prison overcrowding. A clear, consistent correctional standard is critical to statewide enforcement in order to eliminate the risk of arbitrary or capricious interpretation and promote appropriate placement of inmates.

- These proposed emergency regulations are necessary for the immediate preservation of the peace, health, and safety of the general public. The severe overcrowding continues to pose substantial risk to the safety of the men and women who work inside these institutions and the inmates housed in them. The substantial risk of violence, greater difficulty controlling large inmate populations, possible transmission of infectious illnesses, and the limited space for inmate living conditions which obstructs the view of correctional staff continue to maintain an environment with enormous security risks for CDCR staff, inmates, and the public. Overcrowding leads to inmate unrest and misconduct, causes harm to people and property, reduces and eliminates programs, and frustrates rehabilitation efforts. To alleviate this situation, the CDCR proposes to amend Section 3379, Inmate Transfers, by adding new text that will establish and include California Out of State Facility (COCF) transfers.

## TITLE 18. FRANCHISE TAX BOARD

As required by section 11346.4 of the Government Code, this is notice that a public hearing has been scheduled to be held at 10:00 a.m., Monday, January 12, 2008, at 9645 Butterfield Way, Town Center, Golden State Room B, Sacramento, California, to consider amendment of section 25111 and adoption of section 25113 under Title 18 of the California Code of Regulations, pertaining to a water's-edge election.

An employee of the Franchise Tax Board will conduct the hearing. Interested persons are invited to present comments, written or oral, concerning the proposed

regulatory action. It is requested, but not required, that persons who make oral comments at the hearing also submit a written copy of their comments at the hearing.

Government Code section 15702, subdivision (b), provides for consideration by the three-member Franchise Tax Board of any proposed regulatory action if any person makes such a request in writing.

### WRITTEN COMMENT PERIOD

Written comments will be accepted until 5:00 p.m., January 12, 2008. All relevant matters presented will be considered before the proposed regulatory action is taken. Comments should be submitted to the agency officer named below.

### AUTHORITY & REFERENCE

Section 19503 of the Revenue and Taxation Code authorizes the Franchise Tax Board to prescribe regulations necessary for the enforcement of Part 10 (commencing with section 17001), Part 10.2 (commencing with section 18401), Part 10.7 (commencing with section 21001) and Part 11 (commencing with section 23001) of the Revenue and Taxation Code. Section 25113 authorizes the Franchise Tax Board to prescribe any regulations that are necessary or appropriate to implement the purposes of that section. The proposed regulatory action interprets, implements, and makes specific section 25113 of the Revenue and Taxation Code, and makes necessary amendments to section 25111 to conform to statutory changes made to section 25111 of the Revenue and Taxation Code.

### INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

In 1988, the California Legislature adopted Revenue and Taxation Code section 25110, et seq., which allowed California taxpayers that were members of a unitary group to "elect to account for and determine their income derived from California sources by considering only the income and apportionment factors" of certain affiliated corporations, which are generally only the domestic members of the unitary group, which is called the "water's-edge" method.

Originally, taxpayers that wanted to utilize the water's-edge method of combined reporting were required to enter into a contract with the Franchise Tax Board for an 84-month period. The requirements for satisfying the terms of the contract were contained in Revenue and Taxation Code section 25111 and the regulations promulgated thereunder. For taxable years beginning on or after January 1, 2003, the provisions for making a water's-edge election were substantially

changed when Revenue and Taxation Code section 25113 was enacted and Revenue and Taxation Code section 25111 was amended. Revenue and Taxation Code section 25113 replaced the contract provided for in Revenue and Taxation Code section 25111 with a statutory election, which is also to be made for an 84-month period.

To date, there have been no regulations promulgated with respect to Revenue and Taxation Code section 25113. However, the Franchise Tax Board issued FTB Notice 2004-2 to address transition issues between the two statutes. Proposed regulation section 25113 incorporates some of the examples found in that Notice.

Revenue and Taxation Code sections 25111 and 25113 both provide that taxpayers that have a valid election for taxable years beginning before January 1, 2003 will continue to file on a water's-edge basis and will be deemed to have elected under the new rules for taxable years beginning on or after January 1, 2003. However, the election commencement date under the new rules will continue to be the start date as originally elected under the old rules. Existing regulation section 25111 is proposed to be amended to reflect this statutory change.

Proposed regulation section 25113 has a definition section that incorporates some of the definitions of regulation section 25111, such as "water's-edge group," and "original return." Proposed regulation section 25113 also provides definitions for terms found in Revenue and Taxation Code section 25113, such as "timely filed," "commencement date," "net book value," "parent corporation," "business assets," and "common parent election."

Proposed regulation section 25113 provides examples of the statutory election rules for taxpayers to use in both electing the water's-edge method and in terminating their water's-edge election. Examples are provided to illustrate situations when a water's-edge election is automatically terminated, terminated at the discretion of the taxpayer or when an electing taxpayer may request Franchise Tax Board consent to terminate its water's-edge election for good cause prior to the expiration of the 84-month period. Also, the proposed regulation provides guidance and examples on re-electing the water's-edge method after a taxpayer terminates its prior election.

#### DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

Mandate on local agencies and school districts: None.  
Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed under Part 7, commencing with Government Code section 17500, of Division 4: None.

Other non-discretionary cost or savings imposed upon local agencies: None.

Cost or savings in federal funding to the state: None.

Significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Potential cost impact on private persons or businesses affected: The Franchise Tax Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on the creation or elimination of jobs in the state: None.

Significant effect on the creation of new businesses or elimination of existing businesses within the state: None.

Significant effect on the expansion of businesses currently doing business within the state: None. Corporations have been making water's-edge elections since 1988. Revenue and Taxation Code section 25113 merely changed the method of making the election and clarified numerous issues relating to the election that arose over the years. This regulation should not affect businesses currently doing business in California.

Effect on small business: The regulation is generally utilized by large multinational corporations and not small businesses.

Significant effect on housing costs: None.

#### CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no alternative considered by it would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory action.

The proposed regulatory action pertains to corporate taxpayers and therefore does not affect private persons.

#### AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

An initial statement of reasons has been prepared setting forth the facts upon which the proposed regulatory action is based. The statement includes the specific purpose of the proposed regulatory action and the factual basis for determining that the proposed regulatory action is necessary.

The express terms of the proposed text of the regulation and the initial statement of reasons and the rule-making file are prepared and available upon request from the agency contact person named in this notice. When the final statement of reasons is available, it can be obtained by contacting the agency officer named below, or by accessing the Franchise Tax Board's website mentioned below.

#### CHANGE OR MODIFICATION OF ACTIONS

The proposed regulatory action may be adopted after consideration of any comments received during the comment period.

The regulation may also be adopted with modifications if the changes are nonsubstantive or the resulting regulation is sufficiently related to the text made available to the public so that the public was adequately placed on notice that the regulation as modified could result from that originally proposed. The text of the regulation as modified will be made available to the public at least 15 days prior to the date on which the regulation is adopted. Requests for copies of any modified regulation should be sent to the attention of the agency officer named below.

#### ADDITIONAL COMMENTS

If you plan on attending or making an oral presentation at the regulation hearing, please contact the agency officer named below.

The hearing room is accessible to persons with physical disabilities. Any person planning to attend the hearing who is in need of a language interpreter or sign language assistance, should contact the officer named below at least two weeks prior to the hearing so that the services of an interpreter may be arranged.

#### CONTACT

All inquiries concerning this notice or the hearing should be directed to Colleen Berwick at the Franchise Tax Board, Legal Branch, P.O. Box 1720, Rancho Cordova, CA 95741-1720; Telephone (916) 845-3306; Fax (916) 845-3648; E-Mail: [colleen.berwick@ftb.ca.gov](mailto:colleen.berwick@ftb.ca.gov). In addition, all questions on the substance of the proposed regulation can be directed to Karen Smith; Tel.: (916) 845-3347. The notice, initial statement of reasons and express terms of the regulation are also available at the Franchise Tax Board's website at [www.ftb.ca.gov](http://www.ftb.ca.gov).

## GENERAL PUBLIC INTEREST

### DEPARTMENT OF FISH AND GAME

#### CALIFORNIA DEPARTMENT OF FISH AND GAME CONSISTENCY DETERMINATION Fish and Game Code Section 2080.1 Tracking Number 2080-2008-024-03

PROJECT: Interstate 580/Isabel Avenue Interchange Construction Project

LOCATION: City of Livermore, Alameda County

NOTIFIER: California Department of Transportation

#### BACKGROUND

The California Department of Transportation (Caltrans) proposes to build the Interstate 580/Isabel Avenue Interchange Construction Project (Project), which includes construction of a new interchange over Interstate 580 (I-580) between the Airway Boulevard Interchange and the Portola Avenue Interchange, removal of the Portola Avenue /I-580 on- and off-ramps and overcrossing, and building a new flyover bridge without a connection to I-580 at this same location. The Project also includes construction of Isabel Avenue between Jack London Boulevard and Portola Avenue; a bridge overcrossing structure at Isabel Avenue and I-580; on- and off-ramps from Isabel Avenue to I-580; the demolition and removal of the Portola Avenue northward from East Airway Boulevard to the proposed Isabel Avenue; the extension of Portola Avenue northward from East Airway Boulevard to the proposed Isabel Avenue; and improvements to Kitty Hawk Road, Linderbergh Avenue, Airway Boulevard, and East Airway Boulevard. The Project will create approximately forty-one acres of new pavement.

The proposed Project is planned in two phases; the interim project and the ultimate project. The main difference between the interim and ultimate projects is the design of the partial cloverleaf (Parclo) interchange, and the width of the newly constructed Portola Avenue. The interim project will include a modified westbound loop ramp entrance, a four-lane Isabel Avenue, and a two-lane Portola Avenue, while the ultimate project will involve a fully developed Parclo interchange and a four-lane Portola Avenue.

The proposed Project will involve work within Arroyo Las Positas at several locations, including Kitty Hawk Road, I-580, and the new Portola Avenue Overcrossing. Extensive instream work will occur at Kitty



Hawk Road, where the Arroyo is now culverted. The Kitty Hawk culverts will be removed, and replaced with a 120-foot wide three-span structure just north of East Airway Boulevard. Culvert removal will be accompanied by removal of the sediment that has accumulated upstream and downstream of the Kitty Hawk Road crossing. Instream work will also occur with relocation of utilities upstream from Isabel Avenue, and placement of pile footings for the west bound diagonal off-ramp and I-580 widening. Sediment removal is also necessary within the Arroyo under I-580. No sediment removal is necessary at the new Portola Avenue Overcrossing, but falsework will be required in the channel during construction.

The San Joaquin kit fox (*Vulpes macrotis mutica*) has been documented within approximately fifteen miles of the Project area. The closest records are approximately seven miles to the east and to the northeast of the Project area. San Joaquin kit fox is a wide-ranging species capable of traveling fifteen miles or more within suitable habitat in the absence of significant barriers to movement. Dispersing San Joaquin kit foxes have the potential to move even greater distances. In addition, individuals of this species have been recorded to move as far as nine miles or more in a single night. There is suitable habitat within and adjacent to the Project area. San Joaquin kit fox is listed as an endangered species under the federal Endangered Species Act (ESA) (16 U.S.C., § 1531, *et seq.*) and a threatened species under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050, *et seq.*).

The proposed Project will result in the loss and degradation of approximately 21.023 acres of the habitat of the San Joaquin kit fox within the Project area. The U.S. Fish and Wildlife Service (USFWS) has determined the San Joaquin kit fox may occur within the Project area based on recent records of the species within dispersal distance of the proposed Project, the biology and ecology of the species, the Project area's adjacent habitat, and suitable habitat for foraging, resting, movement, and other essential behaviors within the Project area. Based on this and other information, USFWS concluded the Project will likely result in a number of adverse effects to the San Joaquin kit fox, including incidental take of the species, loss and degradation of habitat, and restrictions in the ability to travel and disturbance to nighttime foraging as a result of construction activities.

Caltrans, acting in conjunction with the Federal Highway Administration and the City of Livermore (City), consulted with USFWS under Section 7 of the ESA. On August 1, 2007, USFWS issued a Biological Opinion (Ref. No. 1-1-07-F-0280)(BO) and incidental take statement (ITS), which describe the Project, including conservation measures developed to minimize impacts to the San Joaquin kit fox, and set forth mea-

sures to mitigate any remaining impacts to San Joaquin kit fox and its habitat. On September 25, 2007, and again on September 2, 2008, the BO was amended (Ref. Nos. 1-1-07-F-0351 and 81420-2008-F-1717-2) to include additional measures regarding Project coverage, mitigation, funding assurances, and land acquisition for impacts to San Joaquin kit fox. On September 29, 2008, the Director of the Department of Fish and Game (DFG) received correspondence from Jeffrey G. Jensen, on behalf of Caltrans, requesting a determination pursuant to Section 2080.1 of the Fish and Game Code that the BO, as amended, including the Incidental Take Statement (ITS), is consistent with CESA.

## DETERMINATION

DFG has determined the August 1, 2007 BO, as amended on September 25, 2007 and September 2, 2008, including its ITS, is consistent with CESA because the mitigation measures therein meet the conditions set forth in Fish and Game Code section 2081, subparagraphs (b) and (c), for authorizing incidental take of CESA-listed species. Specifically, DFG finds: the take of San Joaquin kit fox will be incidental to an otherwise lawful activity (i.e., construction of a new interchange and related activities); the mitigation measures identified in the BO and its amendments will minimize and fully mitigate the impacts of the authorized take of San Joaquin kit fox; Caltrans and the City have ensured adequate funding to implement the required measures and for monitoring compliance with and the effectiveness of those measures; and the Project will not jeopardize the continued existence of the species. To the extent the BO, as amended, provides that the City shall fulfill certain terms and conditions on behalf of Caltrans, as stated in the BO Caltrans shall ensure the City adheres to and fulfills those terms and conditions. The mitigation measures in the BO, as amended, include, but are not limited to, the following:

### Take Avoidance Measures

- To prevent inadvertent trapping of San Joaquin kit fox during construction, all excavated steep-walled holes or trenches greater than two feet deep shall be covered at the close of each working day by plywood or similar materials, or provided with one or more escape ramps constructed of earth fill or wooden planks. Before such holes or trenches are filled they must be thoroughly inspected for trapped animals. If at any time a trapped San Joaquin kit fox is discovered, the on-site biologist shall immediately place escape ramps or other appropriate structures to allow the animal to escape or USFWS or DFG shall be contacted for guidance.

- All replacement pipes, culverts, or similar structures with a diameter of four-inches or greater that are stored in the action area for one or more overnight periods shall be thoroughly inspected for San Joaquin kit foxes before the pipe is buried, capped, or otherwise used or moved in any way.

*Minimization and Monitoring Measures*

- Prior to the start of construction, all construction personnel shall receive training that includes San Joaquin kit fox identification and photographs, habitat description, limits of construction activities in the Project area, and guidance regarding general measures being implemented to conserve the San Joaquin kit fox as it relates to this Project.
- A USFWS-approved biologist will be on site during all ground-disturbing activities. Upon completion of these activities the USFWS-approved biologist may designate an on-site monitor to ensure compliance with the BO for the duration of the Project. Both the approved biologist and the onsite monitor shall have the authority to halt any activity if a San Joaquin kit fox is encountered or there is a violation of the BO.

*Habitat Compensation Measures*

- The City, on behalf of Caltrans, shall acquire and permanently protect fifty acres of suitable habitat approved by USFWS and DFG to compensate for adverse effects to San Joaquin kit fox, and two species that are both federally listed and California species of special concern, the California red-legged frog, and the California tiger salamander. The habitat to be purchased shall have a conservation easement, management plan, and endowment to manage the habitat in perpetuity.
- Caltrans shall restore riparian vegetation along a portion of Arroyo Las Positas, and the City, on behalf of Caltrans, shall create seasonal wetlands for the benefit of the California red-legged frog and the California tiger salamander to compensate for the loss of habitat for these two species resulting from the Project.
- The conservation easement shall be held by the City or another entity qualified to hold conservation easements subject to approval by USFWS and DFG. USFWS and DFG shall be named as third-party beneficiaries.
- Draft conservation easement language shall be agreed upon by all parties prior to Project impacts.

- Recordation of the conservation easement shall occur within 180 days following acquisition of the compensation property and no later than twenty-four months after construction commences.

*Financial Assurances*

- The City, on behalf of Caltrans, shall provide and be responsible for an endowment to manage the habitat in perpetuity and monitor the conservation easement using financial assurances such as an escrow account or letter of credit issued by the City in favor of DFG prior to Project impacts. The amount of the endowment shall be based on the management plan prepared by the City and approved by USFWS and DFG. DFG, the California Wildlife Foundation, or another entity approved by USFWS and DFG shall hold the endowment in an amount agreed upon by USFWS and DFG.
- All steps necessary to complete the land acquisition, conservation easement, funding endowment, and a final habitat management plan shall be completed and approved by USFWS and DFG as soon as possible but no later than twenty-four months following Project impacts.

*Notification and Reporting*

- USFWS and DFG must be notified within twenty-four hours of the discovery of death or injury to a San Joaquin kit fox, California tiger salamander, and/or California red-legged frog that occurs due to Project activities.
- Caltrans shall submit a post-construction compliance report prepared by the on-site biologist to the Sacramento USFWS office within sixty calendar days of the date of the completion of construction activity. Although not a condition of the BO, as amended, DFG requests a copy of the post-construction compliance report. The report shall include dates construction occurred; the success of the Project in meeting compensation and other conservation measures, and any explanation of failure to meet such measures; known Project effects on the San Joaquin kit fox, California red-legged frog, and California tiger salamander, including incidental take of any of these species; documentation of employee environmental education; and other pertinent information.

Based on this consistency determination, Caltrans does not need to obtain authorization from DFG under CESA for take of San Joaquin kit fox that occurs in carrying out the Project, provided Caltrans implements the



Project as described in the BO, as amended (including the Compensation Projects and Conservation Measures), and complies with the mitigation measures and other conditions described in the BO and ITS, including all amendments. As stated in the BO, Caltrans is responsible for ensuring the City's compliance with all provisions of the BO, including but not limited to the terms and conditions set forth in the ITS, to be fulfilled by the City on behalf of Caltrans. However, if the Project as described in the BO, as amended, including the mitigation measures therein, changes or if USFWS again amends or replaces the BO, Caltrans will need to obtain from DFG a new consistency determination (in accordance with Fish and Game Code section 2080.1) or an incidental take permit (in accordance with Fish and Game Code section 2081).

## DEPARTMENT OF FISH AND GAME

### Department of Fish and Game — Public Interest Notice

For Publication November 14, 2008  
CESA CONSISTENCY DETERMINATION FOR  
SWCA Environmental Consultants Desert Tortoise  
Clearance for Quarry Operations  
Riverside, San Bernardino, and Imperial Counties  
2080–2008–026–06

The Department of Fish and Game (Department) received notice on October 24, 2008 that SWCA Environmental Consultants (SWCA) proposes to rely on consultation between federal agencies to carry out a project that may adversely affect species protected by the California Endangered Species Act (CESA). SWCA is seeking permission to conduct desert tortoise (*Gopherus agassizii*) clearance surveys at eight quarries located at Riverside, San Bernardino and Imperial Counties, California. SWCA requests a determination allowing their biologists to move desert tortoises out of harms way if they are present on the work sites of the eight quarry operations (Project).

The U.S. Fish and Wildlife Service, on June 12, 2007, issued a "no jeopardy" Programmatic Federal Biological Opinion (AESO/SE 22410–2007–F–0230 22410–1996–F–0226) to the Bureau of Reclamation which considers the federally threatened and state threatened desert tortoise and authorizes incidental take for the quarry operations in the Lower Colorado River in Ari-

zona and California. The quarry operations consist of obtaining rock material for use along the Colorado River, access road use and maintenance, blasting at rock faces, treatment of blasted rock materials to reach the proper size for riprap or gravel for roads or other purposes.

Pursuant to California Fish and Game Code Section 2080.1, SWCA is requesting a determination that Biological Opinion AESO/SE 22410–2007–F–0230 22410–1996–F–0226, which considers the quarry operations, is consistent with CESA for the purposes of desert tortoise removal. If the Department determines the BO and ITS, issued for the quarry operations, are consistent with CESA for the proposed Project, SWCA will not be required to obtain an incidental take permit under Fish and Game Code section 2081 for the Project.

## DECISION NOT TO PROCEED

### SUPERINTENDENT OF PUBLIC INSTRUCTION

#### Title 5. EDUCATION

#### State Superintendent of Public Instruction

### NOTICE OF DECISION NOT TO PROCEED

#### Records Retention Regulations

Pursuant to Government Code section 11347, the State Superintendent of Public Instruction (SSPI) has decided not to proceed with title 5, division 1, chapter 16, subchapter 2, sections 16020–16027 (Notice File No. Z2008–0711–01, published July 25, 2008, in the California Regulatory Notice Register 2008, No. 30–Z, page 1258), withdraws this proposed action for further consideration.

The SSPI will initiate at a later date, with notice as required by law, a new proposal to adopt regulations pertaining to the same or similar subject matter. The SSPI will also publish this Notice of Decision Not to Proceed on the California Department of Education's Web site at <http://www.cde.ca.gov/re/lr/r/>.

# **OAL REGULATORY DETERMINATION**

## **OFFICE OF ADMINISTRATIVE LAW**

### **DETERMINATION OF ALLEGED UNDERGROUND REGULATIONS**

**(Pursuant to Government Code Section 11340.5  
and Title 1, section 270, of the California Code  
of Regulations)**

The attachments are not being printed for practical reasons or space considerations. However, if you would like to view the attachments please contact Margaret Molina at (916) 324-6044 or [mmolina@oal.ca.gov](mailto:mmolina@oal.ca.gov).

## **DEPARTMENT OF MENTAL HEALTH**

### **STATE OF CALIFORNIA**

## **OFFICE OF ADMINISTRATIVE LAW**

**2008 OAL DETERMINATION NO. 31  
(OAL FILE NO. CTU 2008-0521-01)**

**REQUESTED BY: Marc Anthony Lowell Endsley**

**CONCERNING: Administrative Directive No. 15.16, issued by Patton State Hospital, Department of Mental Health, regarding restrictions on patients' mail, allowable property, and disposition of contraband.**

**DETERMINATION ISSUED PURSUANT TO  
GOVERNMENT CODE SECTION 11340.5.**

### **SCOPE OF REVIEW**

A determination by the Office of Administrative Law (OAL) evaluates whether or not an action or enactment by a state agency complies with California administrative law governing how state agencies adopt regula-

tions. Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. Our review is limited to the sole issue of whether the challenged rule meets the definition of a "regulation" as defined in Government Code section 11342.600<sup>1</sup> and is subject to the Administrative Procedure Act (APA). If a rule meets the definition of a regulation, but was not adopted pursuant to the APA and should have been, it is an "underground regulation" as defined in California Code of Regulations,<sup>2</sup> title 1, section 250.<sup>3</sup> OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

### **FACTUAL BACKGROUND**

On May 21, 2008, Marc Anthony Lowell Endsley (Petitioner) submitted a petition to OAL challenging an administrative directive issued by the Department of Mental Health (Department) as an underground regulation. Specifically, Petitioner challenges Administrative Directive No. 15.16 (AD 15.16),<sup>4</sup> Allowable Items/Contraband, which was issued by Patton State Hospital (Patton), a state hospital under the jurisdiction of the Department. AD 15.16 was issued by the Executive Director of Patton and became effective on November 15, 2006. Petitioner alleges that AD 15.16 meets the definition of a "regulation" that should have been adopted pursuant to the APA.

Patton houses mental health patients under both civil and forensic commitments. Patton is one of two state hospitals required to house mentally disordered "patients determined [by the Department] to be high security risk patients." (Welf. & Inst. Code, sec. 7230.) Accordingly, a portion of the Patton patient population is high security risk patients. Patton's patient population includes civil commitments under the Lanterman-Petris-Short (LPS) Act (Welf. & Inst. Code, sec. 5000 et seq.) and the Sexually Violent Predator Act (SVPA) (Welf. & Inst. Code, sec. 6600 et seq.). The portion of Patton's patient population that are forensic commitments are placed or committed under Penal Code sec-

<sup>1</sup> Unless otherwise specified, all references are to the Government Code.

<sup>2</sup> Unless otherwise specified, all regulations are to the California Code of Regulations and will be cited by title and section numbers.

<sup>3</sup> As defined by title 1, section 250(a), an

"Underground regulation" means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in Section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

<sup>4</sup> See Exhibit 1 for a copy of AD 15.16.

tions 702.3, 1026, 1370, 1370.1, 1372, 1610, 2684, 2962, 2964(a), 2972, 2974, and 6316.<sup>5</sup>

On June 23, 2008, OAL accepted the petition, which was published in the California Regulatory Notice Register on July 4, 2008. The Department submitted a formal response on August 18, 2008. Petitioner did not submit a rebuttal response and OAL received no public comments to this petition.

### CHALLENGED RULE

The purpose of AD 15.16 sets forth restrictions on access and possession of all patient<sup>6</sup> property identified as contraband, how patients can acquire non-contraband, “allowable” property through specified vendors, and includes controls on patient mail and patient funds.<sup>7</sup>

AD 15.16 provides definitions of its terms and specifies required Patton personnel actions related to the restrictions and controls on contraband and patient mail. The following are examples of the provisions in AD 15.16:

- Requirement that all incoming packages be opened and searched for contraband.
- Requirement that all incoming and outgoing mail correspondence be opened and searched if suspected of containing contraband.
- Requirement that the patient may order items only from approved vendors.
- Definitions of “Contraband,” “Controlled Items,” “Factory Sealed,” “Vendor,” and “Patient Clothing & Property Card.” Many of these definitions are further defined in the directive.
- Requirement for Patton personnel to track and record all incoming mail and packages, to open all mail subject to the AD 15.16 contraband requirements, restrictions and controls, and to allow patients to open “allowable” packages in presence of designated Patton staff.

<sup>5</sup> According to the Department’s website describing Patton’s patient population, viewed on October 16, 2008. ([http://www.dmh.ca.gov/Services\\_and\\_Programs/State\\_Hospitals/Patton/Legal\\_Commitments.asp](http://www.dmh.ca.gov/Services_and_Programs/State_Hospitals/Patton/Legal_Commitments.asp).) The Penal Code sections that apply to Patton forensic commitments generally apply to criminal defendants determined by courts to be incompetent to stand trial or who plead not guilty by reason of insanity, or to inmates or parolees committed under order for psychiatric treatment.

<sup>6</sup> AD 15.16 refers to Patton patients as “Individuals.” We use the term “patients” for consistency with the Department’s regulations and the Welfare and Institutions Code.

<sup>7</sup> AD 15.16 applies to all packages received for all patients, not to just high security risk patients.

- Requirement that property only be acquired directly from an approved vendor, which excludes family or friends.<sup>8</sup>
- Criteria for identifying contraband and examples of items or packaging that constitute contraband in accordance with the directive.
- Disposition of contraband at patient’s option: Item is donated, destroyed or, at patient’s expense, forwarded to addressee designated by patient.
- Requirement for patients to sign a “Lost/Damaged Personal Property Liability Waiver” form for items valued at \$100 or more.
- Requirement that a patient’s possession of more than \$15.00 constitutes contraband funds, and confiscation and disposition of such funds.
- Procedures and restrictions on storage and access of allowable property, including size and space limitations.
- Restrictions on access to allowed but supervised and controlled items and related supervisory responsibilities of designated Patton personnel.
- Requirement to confiscate all items not on the “allowed list” or otherwise constituting contraband, including contraband funds.
- Prohibition on selling, trading, or giving any property between patients.
- Prohibition on the receipt of packages through the Patton Visiting Center.
- Procedures for patients to request exceptions to prohibited property and to amend the allowable property list.
- Procedure to amend the allowable property list.

AD 15.16 includes as many as eight attachments that are incorporated by reference in its provisions. Petitioner only submitted Attachments A and B, both of which provide further limitations and instructions in relation to the AD 15.16 restrictions and controls on patient property. Attachment A, (also titled “Allowable Items/Contraband”<sup>9</sup>), lists specific items of “Approved Items” cross-referenced by the source of each type of listed property, Patton personnel “monitoring require-

<sup>8</sup> We note that patients may acquire property from family or friends as an “approved source” pursuant to policy #12 in AD 15.16 and in the attached “Allowable Items/Contraband” list (Attachment A to AD 15.16) in limited circumstances. However, the AD 15.16 vendor definition expressly excludes family and friends as a vendor.

<sup>9</sup> Attachment A is also referred to as attached “guidelines” or “list” in the directive.

ments,” and specific requirements<sup>10</sup> related to each type of property and its source. Attachment B, titled “Suggested Vendors Providing Mail Order Services,” provides names, addresses, telephone numbers and web site information for approximately 40 vendors.

### DETERMINATION

OAL determines that AD 15.16 meets the definition of a “regulation” as defined in Government Code section 11342.600 that should have been adopted pursuant to the APA.

### AGENCY RESPONSE

On August 18, 2008, OAL received a response from the Department. The Department argues that AD 15.16 does not meet the definition of a regulation for the following reasons:

1. AD 15.16 is not a regulation. Instead, the AD is a guide to the staff at Patton of allowable items at the facility, contraband, and property received by mail.
2. AD 15.16 does not apply generally and does not “implement, interpret, or make specific” any statute. It is not quasi-legislative.
3. AD 15.16 restates state law and regulation.
4. AD 15.16 is exempt from the APA because it falls under the “internal management” exception.
5. AD 15.16 is exempt from the APA by a regulation, title 9, California Code of Regulations, section 884, which was adopted in compliance with the APA.
6. AD 15.16 should be viewed as permissive safety and security measures, due to the existence of high security risk patients and issues of safety and security related to all patients and to Patton staff. Patton should be allowed to create policy based on the situation specific to the facility, and AD 15.16 addresses safety and security issues specific to Patton.
7. The issuance of AD 15.16 is similar to a “local rule” issued by a state prison and exempted from the APA by Penal Code section 5058.
8. AD 15.16 is constitutionally permissible.

### UNDERGROUND REGULATIONS

Section 11340.5, subdivision (a), prohibits state agencies from issuing rules unless the rules comply with the APA:

<sup>10</sup> These requirements are under the heading, “Comments (Information on limits, containers, etc.)”, but clearly specify requirements depending on type of property and its source.

(a) No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in [Government Code] Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to [the APA].

When an agency issues, utilizes, enforces, or attempts to enforce a rule in violation of section 11340.5 it creates an underground regulation as defined in California Code of Regulations, title 1, section 250.

OAL may issue a determination as to whether or not an agency issued, utilized, enforced, or attempted to enforce a rule that meets the definition of a “regulation” as defined in section Government Code 11342.600 that should have been adopted pursuant to the APA. An OAL determination that an agency has issued, utilized, enforced, or attempted to enforce an underground regulation is not enforceable against the agency through any formal administrative means,<sup>11</sup> but it is entitled to “due deference” in any subsequent litigation of the issue pursuant to *Grier v. Kizer* (1990) 219 Cal.App.3d 422 [ 268 Cal.Rptr. 244].

To determine whether an agency issued, utilized, enforced, or attempted to enforce an underground regulation in violation of Government Code section 11340.5, it must be demonstrated that the agency rule is a “regulation” and not exempt from the APA.

### ANALYSIS

Patton is a state mental health hospital under the jurisdiction of the Department. (Welf. & Inst. Code, sec. 4100.) Patton, like other state mental hospitals, has limited authority to act as an independent entity. The responsibility of governing all state mental hospitals lies with the Department. Welfare and Institutions Code section 4101 provides that:

[A]ll of the institutions under the jurisdiction of the State Department of Mental Health shall be governed by uniform rule and regulation of the State Department of Mental Health. . . .

Additionally, Welfare and Institutions Code section 4100 states:

<sup>11</sup> We note that the Department’s response included a request that, if OAL finds that AD 15.16 does meet the definition of a regulation, that OAL allow the Department to continue use of AD 15.16 until regulations can be promulgated to avoid significant disruptions at Patton and to ensure the safety and security of the patients and staff at Patton. OAL has no power to compel the Department to discontinue use of AD 15.16. Such an order must be made by a court of competent jurisdiction.



The department [of Mental Health] has jurisdiction over the following institutions: . . .

(e) Patton State Hospital.

A determination of whether the challenged rule is a “regulation” subject to the APA depends on (1) whether the challenged rule is a “regulation” within the meaning of Government Code section 11342.600, and (2) whether the challenged rule falls within any recognized exemption from APA requirements.

A regulation is defined in Government Code section 11342.600 as:

[E]very rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

In *Tidewater Marine Western, Inc. v. Victoria Bradshaw* (1996) 14 Cal.4<sup>th</sup> 557, 571 [59 Cal.Rptr.2d 186], the California Supreme Court found that:

A regulation subject to the Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.) has two principal identifying characteristics. First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. Second, the rule must implement, interpret, or make specific the law enforced or administered by the agency, or govern the agency’s procedure (Gov. Code, § 11342, subd. (g)).<sup>12</sup>

The first element of a regulation is whether the rule applies generally. AD 15.16 applies to all Patton patients who send or receive mail or packages, to family and friends of all Patton patients and vendors who send or receive mail or packages to any Patton patient, to all vendors from whom Patton patients might acquire property, and to Patton staff. As *Tidewater* points out, a rule need not apply to all persons in the state of California. It is sufficient if the rule applies to a clearly defined class of persons or situations. Patients committed to Patton, their family and friends, employees of Patton, and vendors are clearly defined classes of persons. The first element is, therefore, met.

The second element established in *Tidewater* is that the rule must implement, interpret or make specific the law enforced or administered by the agency, or govern the agency’s procedure. The “law enforced or administered by the agency” also applies when an agency rule

implements, interprets or makes specific its own regulations.

As noted above, Welfare and Institutions Code section 4100 states that the Department has jurisdiction over Patton, and Welfare and Institutions Code section 4101 requires all of the institutions under the jurisdiction of the Department be governed by uniform rule and regulation of the Department. AD 15.16 establishes requirements, restrictions, and controls on access and possession of patient property identified as contraband, how patients may acquire non-contraband, “allowable” property through specified vendors, and includes controls on patient mail and patient funds. AD 15.16, therefore, implements Welfare and Institutions Code sections 4100 and 4101 which deal with the Department’s responsibilities to adopt regulations to govern state hospitals.

Additionally, AD 15.16 implements, interprets or makes specific the Department’s own regulations in title 9, section 884. For example, title 9, section 884(b) provides:

(b) Non-LPS Patients have the following rights, subject to denial for good cause:

(1) A right to keep and use personal possessions as space permits, *except items and materials that are listed as contraband by the facility.*

. . .

(7) A right to receive packages. Designated facility employees shall open and inspect all incoming and outgoing packages addressed to and from patients for contraband. Limitations on the size, weight and volume, and frequency/number of packages allowed shall be *specified by formal facility policy.* (Emphasis added.)

By establishing requirements, restrictions, and controls on access and possession of patient property, AD 15.16 implements, interprets or makes specific title 9, section 884, the regulations administered and enforced by the Department, in the same manner that it implements Welfare and Institutions Code sections 4100 and 4101. The second element in *Tidewater* is, therefore, met. Having met both elements of *Tidewater*, OAL determines that AD 15.16 meets the definition of “regulation” in Government Code section 11342.600.

The final issue to examine is whether AD 15.16 falls within an exemption from the APA. Government Code section 11346 requires that an exemption from the APA must be an express statutory exemption. We find no express APA exemptions that would apply to AD 15.16.

## AGENCY RESPONSE

In its response, the Department makes several arguments for finding that AD 15.16 does not meet the defi-

<sup>12</sup> Section 11342(g) was re-numbered to section 11342.600 in 2000 without substantive change.



dition of a regulation. We will address each argument in turn.

1. AD 15.16 is not a regulation. Instead, the AD is a guide to the staff at Patton of allowable items at the facility, contraband, and property received by mail.

Government Code section 11340.5 specifically prohibits guidelines that meet the definition of “regulation.” Government Code section 11340.5 states:

- (a) No state agency shall issue, utilize, enforce, or attempt to enforce any *guideline*, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter. (Emphasis added.)

AD 15.16, as determined above, meets both the elements of *Tidewater* and, therefore, meets the definition of “regulation.”

Furthermore, the designation of a challenged rule as a “guide” is not dispositive of the challenged rule’s true nature. In *State Water Resources Control Board v. OAL* (1993) 12 Cal.App.4<sup>th</sup> 697, 702 [16 Cal.Rptr.2d 25], the Court held:

The Legislature established the OAL as a central office with the power and duty to review administrative regulations. The Legislature expressed its reasons in no uncertain terms stating, in essence, that it was concerned with the confusion and uncertainty generated by the proliferation of regulations by various state agencies, and that it sought to alleviate these problems by establishing a central agency with the power and duty to review regulations to ensure that they are written in a comprehensible manner, are authorized by statute and are consistent with other law. (Gov. Code, §§ 11340, subd. (e), and 11340.1.) In order to further that function, the relevant Government Code sections are careful to provide OAL authority over regulatory measures whether or not they are designated “regulations” by the relevant agency. *In other words, if it looks like a regulation, reads like a regulation, and acts like a regulation, it will be treated as a regulation whether or not the agency in question so labeled it.* (Emphasis added.)

Thus, the fact that the Department asserts that the challenged AD is a “guide” does not keep it from being found to be a “regulation,” and subsequently subject to the APA, as OAL concluded above.

2. AD 15.16 does not apply generally and does not “implement, interpret, or make specific” any statute. It is not quasi-legislative.

As noted above, the *Tidewater* case does not require that all persons in the state be affected by the rule. Rather, it is enough that the rule apply to a clearly defined class of persons. AD 15.16 is a rule that applies generally because it declares how a certain open classes of cases will be decided, those involving Patton patients, their family, friends, and correspondents, vendors, and Patton staff.

As discussed above, AD 15.16 implements, interprets, or makes specific Welfare and Institutions Code sections 4100 and 4101, which give authority to the Department to adopt regulations for Patton.

Finally, AD 15.16 is “quasi-legislative.” *Tidewater* states:

A written statement of policy that an agency intends to apply generally, that is unrelated to a specific case, and that predicts how the agency will decide future cases is essentially legislative in nature even if it merely interprets applicable law.<sup>13</sup>

Among other requirements, AD 15.16 limits how Patton patients may acquire property, and requires that all packages be searched for contraband and logged. The Department intends AD 15.16 to apply generally to patients and their families and friends. AD 15.16 states how the Department will decide all future handling of mail received or sent by patients. Therefore, it is quasi-legislative action on the part of the Department and is subject to the APA.

3. AD 15.16 restates state law and regulation.

The Department’s response states that AD 15.16 is a restatement of general case law decisions for searching patient mail for contraband, essentially based on a governmental interest involved in ensuring the security and safety of the patients, staff, and community at a high security facility such as Patton. (See Department response, p. 4.) The Department did not provide the case law nor did the Department provide legal citations to demonstrate how AD 15.16 is a restatement of this general case law. Further, OAL did not find any law to support this argument.

The Department’s response argues that, based on the general case law, it has the authority and the necessity for having rules that govern patient’s property and mail. OAL does not dispute that the Department has the authority and the necessity to adopt rules that govern patient’s property and mail. And, a state agency must meet the “authority” and “necessity” standards (Gov. Code, secs. 11349 and 11349.1) when adopting regulations. However, these standards do not come into play when

<sup>13</sup> *Tidewater*, *supra*, at 574–575.

determining whether a challenged rule is an under-ground regulation. Rather, the sole issue is whether the challenged rule meets the definition of a “regulation” as defined in Government Codes section 11342.600 and is subject to the APA.

The Department further argues that AD 15.16 is a re-statement of its own regulations, in title 9, section 884, subdivisions (b)(6) and (b)(7),<sup>14</sup> which provide:

(b) Non-LPS Patients have the following rights, subject to denial for good cause:

...  
(6) A right to have access to letter writing materials and to mail and receive correspondence. Designated facility employees shall open and inspect all incoming and outgoing mail addressed to and from patients for contraband. Confidential mail, as defined in Section 881(c), shall not be read. Limitations on size, weight and volume of mail shall be specified by formal facility policy.

(7) A right to receive packages. Designated facility employees shall open and inspect all incoming and outgoing packages addressed to and from patients for contraband. Limitations on the size, weight and volume, and frequency/number of packages allowed shall be specified by formal facility policy.

The Department argues that the AD 15.16 provisions for opening and searching patient mail for contraband is a restatement of law. Specifically, it is a restatement of “[d]esignated facility employees shall open and inspect all incoming and outgoing mail addressed to and from patients for contraband,” found in both of the above-cited subdivisions of title 9, section 884.

If all AD 15.16 established was the above-quoted language in the subdivisions of title 9, section 884, either verbatim or in similar terms, the provisions for opening and searching patient mail for contraband would be a restatement of law. However, AD 15.16 goes further than this as shown in the examples above. For example, AD 15.16 sets forth the type of package that will be searched for contraband in all cases based on the source of the package or on the type of packaging used.

Additionally, title 9, section 884 applies entirely to non-LPS patients. Patton’s patient population includes LPS commitments. The Department did not cite any law demonstrating how AD 15.16 restates law applicable to LPS commitments.

Similarly, the Department’s response to the entirety of AD 15.16 relies on the fact that Patton has statutory responsibility over “high security risk patients” under Welfare and Institutions Code section 7230. While it is

likely that some civil and forensic commitments at Patton pose a security risk, not all such patients are “high security risk patients” under Welfare and Institutions Code section 7230.<sup>15</sup> It is also likely that a substantial portion of the Patton patient population pose no security risk at all. Notwithstanding, the Department did not cite any law to show how AD 15.16 or its provisions are a re-statement of law applicable to the Patton patient population, regardless of any security risk posed by its patients.

The Department also argues that language in title 9, section 884(b)(1), combined with the definition of contraband in title 9, section 881(e), allows Patton “to create their own list and policies and procedures depending on the facility” such that AD 15.16 is a restatement of law. (See Department response, p. 4.) Similar to the above analysis, if all AD 15.16 established was the same definition of contraband in title 9, section 881(e), either verbatim or in similar terms, it would be a restatement of law. However, AD 15.16 goes further than this for the same reasons explained above.

The Department’s reliance on language in title 9, section 884(b)(1) also fails to support AD 15.16 as a re-statement of law. This section provides:

(b) Non-LPS Patients have the following rights, subject to denial for good cause:

(1) A right to keep and use personal possessions as space permits, except items and materials that are listed as contraband by the facility. Each facility shall make a copy of the contraband listing available on all treatment units and public areas within the facility. Each patient shall receive a copy of the contraband listing upon admission.

If AD 15.16 provided the above-quoted language from title 9, section 884(b)(1) or used similar terms, it would be a restatement of law. However, AD 15.16 goes further than this as shown in the examples of its provisions and, accordingly, is not a restatement of title 9, section 884(b)(1).

Accordingly, the AD 15.16 provisions are not mere restatements of law. They meet the definition of “regulation” and should have been adopted pursuant to the procedures in the APA.

<sup>15</sup> High security risk patients under Welfare and Institutions Code section 7230 are determined by the Department pursuant to Welfare and Institutions Code section 7228, which only applies to forensic commitments under Penal Code sections 1026 and 1370. Not all forensic commitments under these sections are necessarily “high security risk patients.” Moreover, commitments under these sections comprise only a small portion of Patton’s forensic patient population. Patton’s patient population include forensic commitments that are committed under other Penal Code sections, as well as LPS and SVPA civil commitments pursuant to Welfare and Institutions Code section 5000 et seq. (Lanterman-Petris-Short Act) and section 6600 et seq. (Sexually Violent Predator Act).

<sup>14</sup> The Department erroneously cites subdivisions (a)(6) and (a)(7) of title 9, section 884. The relevant subdivisions to title 9, section 884 are (b)(6) and (b)(7).

4. AD 15.16 is exempt from the APA because it falls under the “internal management” exception.

Government Code section 11340.9(d) exempts from compliance with the APA any rule that “relates only to the internal management of the state agency.” This exemption from the APA has been construed very narrowly. The California Court of Appeal in *Grier v. Kizer* summarizes case law on internal management, stating:

*Armistead v. State Personnel Board* [citation] determined that an agency rule relating to an employee’s withdrawal of his resignation did not fall within the internal management exception. The Supreme Court reasoned the rule was ‘designed for use by personnel officers and their colleagues in the various state agencies throughout the state. It interprets and implements [a board rule]. It concerns termination of employment, a matter of import to all state civil service employees. It is not a rule governing the board’s internal affairs. [Citation.] “Respondents have confused the internal rules which may govern the department’s procedure . . . and the rules necessary to properly consider the interests of all . . . under the . . . statutes . . .” [Fn. omitted.] . . . [Citation; emphasis added by *Grier* court.]

*Armistead* cited *Poschman v. Dumke* [citation], which similarly rejected a contention that a regulation related only to internal management. The *Poschman* court held: “Tenure within any school system is a matter of serious consequence involving an important public interest. The consequences are not solely confined to school administration or affect only the academic community.” . . . [Citation.]

Relying on *Armistead*, and consistent therewith, *Stoneham v. Rushen* [citation] held the Department of Corrections’ adoption of a numerical classification system to determine an inmate’s proper level of security and place of confinement ‘extend[ed] well beyond matters relating solely to the management of the internal affairs of the agency itself [,]’ and embodied ‘a rule of general application significantly affecting the male prison population’ in its custody.

By way of examples, the above mentioned cases disclose that the scope of the internal management exception is narrow indeed. This is underscored by *Armistead*’s holding that an agency’s personnel policy was a regulation because it affected employee interests. Accordingly, even internal administrative matters do not per se fall within the internal management exception . . . .<sup>16</sup>

The internal management exemption has been judicially determined to be narrow in scope.<sup>17</sup> The courts apply the internal management exemption if the “regulation” at issue (1) affects only the employees of the issuing agency,<sup>18</sup> and (2) does not address a matter of serious consequence involving an important public interest.<sup>19</sup> In order for a rule or procedure to fall within the internal management exemption, it must meet both of these two prongs.

AD 15.16 fails to meet the first prong. AD 15.16 affects more than employees of the Department. It also affects Patton patients, their family, friends, and correspondents, and vendors.<sup>20</sup> Therefore AD 15.16 does not fall within the internal management exemption.

5. AD 15.16 is exempt from the APA by a regulation, title 9, California Code of Regulations, section 884, which was adopted in compliance with the APA.

The Department argues that the plain language in of title 9, section 884 provides “specific exemptions” that allows each facility to determine policy addressing individual needs of the facility, such that certain provisions of AD 15.16 are exempt from the APA. Since these title 9 regulations were adopted in compliance with the APA, they are legally valid exemptions to the APA that allow state hospitals to adopt additional regulations within the scope of the specific exemption. (Department response, pp. 4 and 5) The following provisions are examples of language from title 9, section 884 that the Department relies on:

- “Each facility shall make a copy of the contraband listing available on all treatment units and public areas within the facility” (title 9, section 884(b)(1).)
- “Limitations on size, weight and volume of mail shall be specified by formal facility policy.” (Title 9, section 884(b)(6).)

The Department argues that the plain language in of title 9, section 884(b)(1) allows any state mental hospital “to create their own list and policies and procedures depending on the facility,” such that AD 15.16 is exempt from the APA. (Department response, p. 4.) Similarly, the plain language in of title 9, section 884(b)(6) allows any state mental hospital “in regards to the limitation of size, weight, and volume, the facility is al-

<sup>17</sup> *Id.*

<sup>18</sup> See *Armistead v. State Personnel Board* (1978) 22 Cal.3d 198, 149 Cal.Rptr. 1; *Stoneham v. Rushen* (*Stoneham I*) (1982) 137 Cal.App.3d 729, 188 Cal.Rptr. 130; *Poschman v. Dumke* (1973) 31 Cal.App.3d 932, 107 Cal.Rptr. 596.

<sup>19</sup> See *Poschman*, *supra*, 31 Cal.App.3d at 943, 107 Cal.Rptr. at 603; and *Armistead*, *supra*, 22 Cal.3d at 203–204, 149 Cal.Rptr. at 3–4.

<sup>20</sup> Because AD 15.16 does not meet the first prong of the “internal management” exemption, there is no need to discuss or analyze the second prong.

<sup>16</sup> *Grier v. Kizer*, *supra*, at 436.



lowed to create a policy based on the situation of the facility such as patient property, space, the capabilities of the facility, and safety and security of the facility.” (Department response, p. 5.)

Such an interpretation of this or similar language is prohibited by the plain language of the APA, which exempts state agencies from APA requirements “only to the extent the *legislation* shall do so expressly.” (Government Code section 11346; emphasis added.) Contrary to the Department’s arguments, such an interpretation of agency’s own regulations would meet the definition of a regulation under the two-part *Tidewater* test discussed above, requiring compliance with the APA. Agencies can only accomplish an exemption from the APA through legislation. Accordingly, neither the above-cited examples in title 9, section 884 exempts AD 15.16 from the APA.

6. AD 15.16 should be viewed as permissive safety and security measures, due to the existence of high security risk patients and issues of safety and security related to all patients and to Patton staff. Patton should be allowed to create policy based on the situation specific to the facility, and AD 15.16 addresses safety and security issues specific to Patton.

OAL sympathizes with the need to ensure the safety and security of the state hospitals and the people who live and work there. However, this determination is limited to the single issue of whether AD 15.16 meets the definition of a regulation. We have no authority to create an exemption from the APA based upon the situation found in state hospitals. That is the purview of the Legislature.

7. The issuance of AD 15.16 is similar to a “local rule” issued by a state prison and exempted from the APA by Penal Code section 5058.

In Penal Code section 5058(c), the Legislature established an exemption to the APA, the “local rule” exemption, applicable only to individual prisons and correctional facilities under the jurisdiction of Department of Corrections and Rehabilitation (Corrections). Penal Code section 5058(c) provides in pertinent part:

The following are deemed not to be “regulations” as defined in Section 11342.600 of the Government Code:

(1) Rules issued by the director [of Corrections] *applying solely to a particular prison or other correctional facility.* . . . (Emphasis added.)

The express terms of Penal Code section 5058(c) clearly apply only to prisons and correctional facilities under the jurisdiction of Corrections, and accordingly do not apply to state hospitals under the jurisdiction of

the Department. Penal Code section 5058(c) was enacted by the Legislature in recognition that each prison or correctional facility under the jurisdiction of Corrections may have conditions unique to that prison. In such cases, the individual prison or correctional facility may adopt rules to address those conditions without following the requirements of the APA. The situation that the Department faces is very similar to that of Corrections. However, OAL does not have the authority to apply to the Department a statute that specifically applies only to prisons or correctional facility under the jurisdiction of Corrections. This is a decision that must be made by the Legislature.

The Department cites Welfare and Institutions Code section 4107, which gives authority to Corrections over the security of certain patient commitments to Patton. Essentially, the Department argues that the Penal Code section 5058 “local rule” exemption should apply because, under Welfare and Institutions Code section 4107,

[Corrections] is actually responsible for packages coming in [to Patton]. The integrity and security of [Patton’s] compound perimeters is the responsibility of the California Department of Corrections and Rehabilitation, as well as other specific areas including the package room. The package room receives the mail and packages that are being received. [Corrections] also manages the visitation room and what is permissible into the facility. (Department response, p. 6.)

Our review of Welfare and Institutions Code section 4107 and other sections in the same chapter confirms that Corrections has some amount of jurisdiction and authority related to security at Patton. However, nothing in these sections provides express statutory language for applying the “local rule” exemption under Penal Code section 5058(c). State hospitals are under the jurisdiction of the Department and OAL does not have authority to extend the “local rule” exemption to them for the reasons state above.

8. AD 15.16 is constitutionally permissible.

The Department argues that, pursuant to *Martyr v. Mazur-Hart* (1992) 789 F. Supp. 1081, forensic patients at state mental hospitals do not have a right for their mail or packages to received free of searches for contraband.

The constitutionality of the provisions of AD 15.16 and whether the patients do or do not have specific rights is not determinative of whether AD 15.16 is an underground regulation. The sole issue is whether the challenged rule meets the definition of “regulation” as defined in Government Code section 11342.600 and is subject to the Administrative Procedure Act.



**CONCLUSION**

OAL finds that AD 15.16 is a “regulation” as defined in section 11342.600, does not fall within any express statutory APA exemption, and therefore, it should have been adopted pursuant to the APA.

Date: October 31, 2008

/s/  
Susan Lapsley  
Director

/s/  
Richard L. Smith  
Staff Counsel

Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814

<p><b>SUMMARY OF REGULATORY ACTIONS</b></p>
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**REGULATIONS FILED WITH  
SECRETARY OF STATE**

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2008-0925-03  
CALIFORNIA HORSE RACING BOARD  
Coupling of Horses

This regulatory action creates an exception to the requirement to couple racehorses (i.e. treat them as a single betting interest) racing in the same race and owned by the same owner(s) if the horses are thoroughbreds trained by different trainers and owned by partnerships that meet specified criteria.

Title 4  
California Code of Regulations  
AMEND: 1606  
Filed 10/30/2008  
Effective 11/29/2008  
Agency Contact: Harold Coburn (916) 263-6397

File# 2008-0917-03  
CALIFORNIA INSTITUTE FOR REGENERATIVE  
MEDICINE  
Intellectual Property & Revenue Sharing — For-Profit  
Organizations

This regulatory action deals with access requirements for products developed by for-profit grantees and revenue sharing requirements for for-profit grantees.

Title 17  
California Code of Regulations  
AMEND: 100407, 100408  
Filed 10/30/2008  
Effective 11/29/2008  
Agency Contact: C. Scott Tocher (415) 396-9136

File# 2008-1010-01  
DEPARTMENT OF CORRECTIONS AND REHABILITATION  
Inmate Transfers

Pursuant to Governor Schwarzenegger's October 4, 2006 Prison Overcrowding State of Emergency Proclamation, this rulemaking action amends provisions in Title 15 of the California Code of Regulations to implement the California Out-of-State Correctional Facility Program. The rulemaking establishes eligibility and ineligibility criteria, certain due process requirements, and a list of priorities for transfer of California prison inmates to out-of-state correctional facilities to relieve overcrowding of inmates in California correctional facilities.

Title 15  
California Code of Regulations  
AMEND: 3000, 3375, 3376.1, 3379  
Filed 10/30/2008  
Effective 10/30/2008  
Agency Contact: Kelly Medina (916) 341-7390

File# 2008-1027-02  
DEPARTMENT OF FOOD AND AGRICULTURE  
Asian Citrus Psyllid Interior Quarantine

This rulemaking will expand the existing regulated quarantine area approximately 1,953 square miles in Imperial and San Diego counties for the Asian Citrus Psyllid (“ACP”) *Diaphorina citri* due to recent discoveries of this pest. Both county agricultural commissioners have requested the action by the Department of Food and Agriculture.

Title 3  
California Code of Regulations  
AMEND: 3435(b)  
Filed 10/29/2008  
Effective 10/29/2008  
Agency Contact: Stephen S. Brown (916) 654-1017

File# 2008-0926-01

**DEPARTMENT OF FOOD AND AGRICULTURE**  
Citrus Assessments

In this regulatory action, the Department of Food and Agriculture adopts, amends, and repeals regulations pertaining to citrus assessments under Food and Agricultural Code sections 48000 through 48003 and pertaining to the inspection and sampling of citrus for serious damage due to freezing.

**Title 3**

California Code of Regulations

ADOPT: 1430.142 AMEND: 1430.43 REPEAL:  
1430.44.5

Filed 10/30/2008

Effective 11/01/2008

Agency Contact: Rick S. Jensen (916) 427-1100

File# 2008-0930-06

**DEPARTMENT OF INSURANCE**

**Changes to Rule 94 of the Rules and Rates Manual**

This action updates Rule 94 of the Automobile Assigned Risk Plan's Simplified Manual of Rules and Rates to add new rating factors for a limousine with a seating capacity greater than eight that makes trips of more than 50 miles and eliminating the rating factors for a bingo bus traveling more than 50 miles.

**Title 10**

California Code of Regulations

AMEND: 2498.5

Filed 11/03/2008

Effective 12/03/2008

Agency Contact: Mike Riordan (415) 538-4226

File# 2008-0924-01

**DEPARTMENT OF MOTOR VEHICLES**

**Employer Testing Program**

This rulemaking allows third-party examiners of applicants for Class A or B commercial drivers' licenses to satisfy the requirement that they conduct an examination of an applicant at least once every 90 days by conducting an examination of a driver who already has a commercial Class A or B license. The rulemaking updates numerous forms used in the Employer Testing Program to the revisions currently in use. The rulemaking also adds a new DMV form (Employer Testing Program Agreement) which is required by federal regulations.

**Title 13**

California Code of Regulations

AMEND: 25.06, 25.07, 25.08, 25.09, 25.10, 25.14,  
25.15, 25.16, 25.17, 25.18, 25.19, 25.20, 25.21,  
25.22

Filed 11/03/2008

Effective 12/03/2008

Agency Contact: Randi Calkins (916) 657-8898

File# 2008-0919-02

**DEPARTMENT OF PUBLIC HEALTH**

**Revised Drinking Water Standard for Arsenic**

This action lowers the allowable amount of arsenic in public water systems, making the maximum contaminant level the same as the primary federal standard that was set in 2006.

**Title 22**

California Code of Regulations

AMEND: 64413.1, 64414, 64431, 64432, 64432.2,  
64432.8, 64433.3, 64445.1, 64447.2, 64482

Filed 10/29/2008

Effective 11/28/2008

Agency Contact: Laurel Prior (916) 440-7673

File# 2008-1017-03

**FAIR POLITICAL PRACTICES COMMISSION**

**COLA for Gifts, Contributions and Expenditure Limits**

These regulations concern Contribution Limit and Voluntary Expenditure Ceiling Amounts; Definition of Economic Interest; Source of Gifts; Provisions of Conflict of Interest Codes; Gift Limit Amount; Definition of "Informational Material"; and Return, Donation, or Reimbursement of a Gift.

**Title 2**

California Code of Regulations

AMEND: 18545, 18703.4, 18730, 18940.2,  
18942.1, 18943

Filed 10/31/2008

Effective 11/30/2008

Agency Contact:

Virginia Latteri-Lopez (916) 324-3854

File# 2008-1017-02

**FAIR POLITICAL PRACTICES COMMISSION**

**Principal Officers**

The Fair Political Practices Commission is amending section 18427, and adopting section 18402.1, title 2, California Code of Regulations. These sections are entitled "Duties of Treasurers and Candidates With Respect to Campaign Statements," and "Principal Officers," respectively.

**Title 2**

California Code of Regulations

ADOPT: 18402.1 AMEND: 18427

Filed 10/31/2008

Effective 11/30/2008

Agency Contact:

Virginia Latteri-Lopez (916) 324-3854

File# 2008-0917-02

**FISH AND GAME COMMISSION**

**Crabs-Open Season**

The Fish and Game Commission (Commission) seeks to amend section 29.85 of title 14 of the California

Code of Regulations relating to the opening of the season for recreational taking of Dungeness crab in Del Norte, Humboldt and Mendocino counties. Specifically, the Commission seeks to change the opening date for recreational taking of Dungeness crab from the last Saturday in November to be the first Saturday in November.

Title 14  
California Code of Regulations  
AMEND: 29.85  
Filed 10/30/2008  
Effective 10/30/2008  
Agency Contact: Sheri Tiemann (916) 654-9872

File# 2008-0918-03  
PHYSICIAN ASSISTANT COMMITTEE  
Citation and Fine

This action amends the Committee's existing citation and fine regulation authorized by Business and Professions Code sections 125.9 and 148 to:

1) Increase the maximum fine authorized from \$2500 to \$5000.

2) Add violation of Business and Professions Code section 119 to the list of statutes the violation of which is subject to citation and fine.

3) Codify the factors to be considered prior to imposition of fine higher than \$2500.

Title 16  
California Code of Regulations  
AMEND: 1399.571  
Filed 10/30/2008  
Effective 11/29/2008  
Agency Contact: Glenn L. Mitchell (916) 561-8783

File# 2008-1030-02  
STATE WATER RESOURCES CONTROL BOARD  
Emergency Fee Regulations to Conform With Budget Act 2008-09

On October 7, 2008, the State Water Resources Control Board adopted Resolution 2008-0074, which revised the emergency water right and water quality certification fee regulations and schedules to be consistent with the revenue levels set forth in the Budget Act for Fiscal Year (FY) 2008-2009. Under the Water Code and existing regulations, a person filing a water right application, petition, registration, or other filing, must pay a filing fee to the State Water Board. Existing regulations also establish annual fees for water right permits, licenses, water leases, and applications for water quality certification under Clean Water Act (CWA) section 401 for an activity that involves a hydroelectric facility licensed by the Federal Energy Regulatory Commission (FERC). In general, these emergency regula-

tions would adjust the fee schedule to (1) reduce fees for most applications for temporary permits filed under Water Code section 1426; (2) increase the limit on filing fees for the largest (in terms of quantity of water to be appropriated or transferred) applications, petitions, and water transfers; and (3) increase annual fees for projects under review for CWA section 401 certification in connection with FERC licensing and for projects issued FERC licenses. The proposed fee schedule will result in no change in the annual fees from FY 2007-2008 for water right permits and licenses; accordingly, fees for most of the current water right fee payers would remain unchanged. The proposed revision will also amend the requirements for petitions for reconsideration.

Title 23  
California Code of Regulations  
AMEND: 1062, 1064, 1077, 3833.1  
Filed 11/05/2008  
Effective 11/05/2008  
Agency Contact: Erin Mahaney (916) 341-5187

File# 2008-0926-06  
VICTIM COMPENSATION AND GOVERNMENT  
CLAIMS BOARD  
Hearings for Indemnification of Citizens Benefiting the Public and Indemnification of Victims of Crime

This filing revises the existing regulations regarding hearings for indemnification of citizens benefiting the public and indemnification of victims of crime. This filing is submitted pursuant to section 100 of title 1 of the California Code of regulations as being without regulatory effect.

Title 2  
California Code of Regulations  
AMEND: 647.1, 647.2, 647.3, 647.20, 647.20.1, 647.21, 647.22, 647.23, 647.24, 647.25, 647.26, 647.30, 647.31, 647.32, 647.33, 647.35, 647.36, 648.1, 648.3, 648.5, 649.20, 649.21  
Filed 11/03/2008  
Agency Contact: Roslyn Mack (916) 491-3752

**CCR CHANGES FILED  
WITH THE SECRETARY OF STATE  
WITHIN June 4, 2008 TO  
November 5, 2008**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

**Title 2**

11/03/08 AMEND: 647.1, 647.2, 647.3, 647.20, 647.20.1, 647.21, 647.22, 647.23, 647.24, 647.25, 647.26, 647.30, 647.31, 647.32, 647.33, 647.35, 647.36, 648.1, 648.3, 648.5, 649.20, 649.21  
 10/31/08 AMEND: 18545, 18703.4, 18730, 18940.2, 18942.1, 18943  
 10/31/08 ADOPT: 18402.1 AMEND: 18427  
 10/22/08 ADOPT: 59600  
 10/21/08 ADOPT: 1859.41.1, 1859.42.1 AMEND: 1859.2, 1859.41, 1859.42, 1859.43, 1859.51, 1859.147, Form SAB 50-01, Form SAB 50-03  
 10/20/08 ADOPT: 20120, 20121, 20122, 20123, 20124, 20125, 20126, 20127  
 09/04/08 ADOPT: 18530.45  
 09/04/08 AMEND: 18946.4  
 08/14/08 AMEND: 1859.2, 1859.121, 1859.122, 1859.127, 1859.129  
 08/08/08 ADOPT: 21905.5 AMEND: 21903, 21905  
 07/16/08 ADOPT: 18946.6  
 07/10/08 AMEND: 1859.76, 1859.83, 1859.104.3  
 07/10/08 AMEND: 1859.71  
 07/08/08 AMEND: 2271  
 06/26/08 AMEND: 554.2, 554.3  
 06/17/08 ADOPT: div. 8, ch. 112, sec. 59570  
 06/11/08 AMEND: 18360, 18361  
 06/11/08 ADOPT: 18421.7 AMEND: 18401  
 06/11/08 ADOPT: 18944.2 REPEAL: 18944.2

**Title 3**

10/30/08 ADOPT: 1430.142 AMEND: 1430.43 REPEAL: 1430.44.5  
 10/29/08 AMEND: 3435(b)  
 10/28/08 ADOPT: 3408  
 10/22/08 AMEND: 3700(c)  
 10/20/08 AMEND: 3433(b)  
 10/20/08 AMEND: 3434(b)  
 10/17/08 AMEND: 3423(b)  
 10/15/08 AMEND: 3433(b)  
 10/14/08 AMEND: 3434(b)  
 10/14/08 AMEND: 3423(b)  
 10/01/08 AMEND: 3434(b)  
 09/24/08 AMEND: 810.1 REPEAL: 810  
 09/23/08 AMEND: 3591.20(a)  
 09/23/08 AMEND: 3434(b)  
 09/18/08 AMEND: 3591.20(a)  
 09/17/08 AMEND: 3435(b)  
 09/11/08 AMEND: 3591.20(a)  
 09/10/08 AMEND: 3434  
 09/05/08 ADOPT: 3435  
 09/03/08 AMEND: 6452.2  
 09/02/08 AMEND: 3433(b)

09/02/08 AMEND: 3591.6(a)  
 08/26/08 AMEND: 3434(b)  
 08/25/08 AMEND: 3423(b)  
 08/18/08 AMEND: 6738, 6739  
 08/18/08 AMEND: 3434(b)  
 08/13/08 AMEND: 3434(b)  
 08/12/08 AMEND: 3406(b)  
 08/11/08 AMEND: 3406(b)  
 08/01/08 AMEND: 3589(a)  
 08/01/08 ADOPT: 3591.22  
 07/28/08 AMEND: 3434(b)  
 07/25/08 AMEND: 902.9  
 07/24/08 ADOPT: 3591.21  
 07/22/08 AMEND: 3417(b)  
 07/16/08 AMEND: 3700  
 07/16/08 AMEND: 3406  
 07/14/08 AMEND: 3963  
 07/11/08 AMEND: 3434(b)  
 07/09/08 AMEND: 3434(b)  
 06/30/08 AMEND: 3589(a)  
 06/24/08 AMEND: 3963  
 06/24/08 AMEND: 3060.3  
 06/23/08 AMEND: 3591.5(a)  
 06/17/08 AMEND: 2751  
 06/16/08 AMEND: 3434(b)  
 06/11/08 AMEND: 3434(b)  
 06/09/08 AMEND: 3700  
 06/04/08 AMEND: 3434(b)

**Title 4**

10/30/08 AMEND: 1606  
 10/16/08 ADOPT: 12047, 12048, 12050, 12348 AMEND: 12002  
 10/03/08 ADOPT: 12008 AMEND: 12122, 12200.14, 12200.20, 12202, 12203A, 12203.2, 12205.1, 12218.13, 12220.14, 12220.20, 12220.20A, 12222, 12237, 12301, 12342, 12343, 12344, 12345  
 09/29/08 AMEND: 1843.2  
 09/02/08 AMEND: 1850  
 08/25/08 ADOPT: 8102, 8102.1, 8102.2, 8102.3, 8102.4, 8102.5, 8102.6, 8102.7, 8102.8, 8102.9, 8102.10, 8102.11, 8102.12, 8102.13, 8102.14, 8102.15 AMEND: 8090, 8091, 8092, 8093, 8094, 8095, 8096, 8097, 8098, 8099, 8100, 8101  
 08/21/08 ADOPT: 1634 AMEND: 1420  
 08/12/08 ADOPT: 4180, 4181  
 08/08/08 AMEND: 12002, 12100, 12101, 12120, 12122, 12128, 12130, 12140, 12200, 12200.3, 12200.7, 12200.9, 12200.10A, 12200.10B, 12200.10C, 12200.11, 12200.13, 12200.14, 12200.16, 12200.17, 12200.18, 12200.20, 12200.21, 12201, 12202, 12203,



12203A, 12203.1, 12203.2, 12203.3,  
12203.5, 12204, 12205, 12205.1, 12218,  
12218.1, 12218.5, 12218.7, 12218.11,  
12220, 12220.3, 12220.13, 12220.14,  
12220.16, 12220.18, 12220.20,  
12220.20A, 12220.21, 12220.23, 12221,  
12222, 12223, 12224, 12225, 12225.1,  
12233, 12234, 12235, 12236, 12300,  
12301, 12301.1, 12302, 12303, 12304,  
12305, 12306, 12308, 12309, 12310,  
12335, 12341, 12342, 12343, 12344,  
12345, 12347, 12358, 12359, 12360,  
12370, 12400, 12401, 12402, 12403,  
12404, 12405, 12460, 12463, 12464,  
12466, 12550, 12552, 12554, 12556,  
12558, 12560, 12562, 12564, 12566,  
12568, 12590  
08/04/08 AMEND: 1843.2  
07/14/08 AMEND: 8070, 8072, 8073  
07/10/08 AMEND: 1481, 1783, 1784  
06/24/08 ADOPT: 12335, 12340, 12357 AMEND:  
12342, 12343, 12344, 12345, 12358,  
12359

**Title 5**

10/17/08 ADOPT: 100000, 100001, 100002,  
100003, 100004, 100005, 100006,  
100007, 100008, 100009, 100010,  
100011, 100012, 100013, 100014,  
100015  
10/14/08 ADOPT: 42729  
09/10/08 AMEND: 41000  
09/09/08 ADOPT: 19828.3, 19837.2 AMEND:  
19816, 19816.1, 19828.2, 19837.1,  
19846  
08/11/08 AMEND: 41000  
08/04/08 ADOPT: 15575, 15576, 15577, 15578  
07/16/08 AMEND: 18272  
06/24/08 AMEND: 80021  
06/19/08 AMEND: 4600(l)  
06/13/08 ADOPT: 55185, 57017 AMEND: 55180,  
57001.7, 58003.4, 58770, 58771, 58774  
06/10/08 AMEND: 30910, 30911, 30912, 30913,  
30914, 30916  
06/10/08 AMEND: 30920, 30921, 30922, 30923,  
30924, 30925, 30927  
06/09/08 ADOPT: 19828.3, 19837.2 AMEND:  
19816, 19816.1, 19828.2, 19837.1,  
19846

**Title 7**

06/10/08 ADOPT: 236.1

**Title 8**

10/01/08 AMEND: 3412, 3413, 3414, 3416  
09/23/08 AMEND: 5155  
09/22/08 ADOPT: 1530.1

09/17/08 AMEND: 1512  
08/26/08 AMEND: 5168, 6775  
08/25/08 ADOPT: 9721.11, 9721.12, 9721.13,  
9721.14, 9721.21, 9721.33 AMEND:  
9720.1, 9720.2, 9721.1, 9721.2, 9721.31,  
9721.32, 9722, 9722.1, 9722.2, 9723  
08/08/08 AMEND: 1532.1  
08/04/08 AMEND: 3649  
08/04/08 AMEND: Appendix C following section  
560, Appendices A, B, and C following  
section 1938, and section 5001  
07/30/08 AMEND: 1524  
07/18/08 AMEND: 290.0, 290.1, 291.0, 291.1,  
291.2, 291.5, 292.0, 294.0, 295.0, 296.0,  
296.1, 296.2, 296.3, 296.4  
07/18/08 AMEND: 2500.7  
07/17/08 AMEND: 4885, 4924, 5004  
07/17/08 AMEND: 1604.24, 1604.26  
07/14/08 AMEND: Appendix B following 1541.1  
06/30/08 ADOPT: 4300.1 AMEND: 4297, 4300  
06/06/08 AMEND: 1710(k)(2)

**Title 9**

07/11/08 ADOPT: 1810.207.5, 1810.220.5  
AMEND: 1830.220  
07/02/08 AMEND: 9515(d), 10522(b)

**Title 10**

11/03/08 AMEND: 2498.5  
09/22/08 AMEND: 2699.6500, 2699.6803,  
2699.6805  
09/15/08 AMEND: 2699.6619, 2699.6700,  
2699.6703, 2699.6705, 2699.6709,  
2699.6711, 2699.6713, 2699.6715,  
2699.6717, 2699.6721, 2699.6723,  
2699.6725  
09/11/08 AMEND: 2330.1  
08/15/08 ADOPT: 2844 AMEND: 2840, 2842  
08/14/08 AMEND: 2699.100, 2699.201,  
2699.205, 2699.207, 2699.209, 2699.400  
08/04/08 AMEND: 5000, 5110, 5111, 5112, 5113,  
5114, 5116, 5117 REPEAL: 5119  
07/30/08 AMEND: 2498.6  
07/24/08 AMEND: 2498.4.9  
07/23/08 AMEND: 2498.4.9  
07/23/08 AMEND: 2498.4.9  
07/21/08 ADOPT: 2330.1, 2330.3, 2330.4, 2330.5  
07/17/08 AMEND: 2498.6  
07/10/08 REPEAL: 2191  
07/10/08 AMEND: 2699.6611  
07/07/08 ADOPT: 2699.6602, 2699.6604  
AMEND: 2699.6603, 2699.6605,  
2699.6607, 2699.6608, 2699.6611,  
2699.6625

06/24/08	ADOPT: 2232.45.1, 2232.45.2, 2232.45.3, 2232.45.4, 2232.45.5 AMEND: 2536.2	09/11/08	AMEND: 10310, 10360, 10810, 10820, Appendix D, Appendix F
06/16/08	AMEND: 2318.6, 2353.1	09/09/08	ADOPT: 17987, 17987.1, 17987.2, 17987.3, 17987.4, 17987.5, 17987.6
<b>Title 11</b>		09/04/08	AMEND: 670.2
10/27/08	AMEND: 1005, 1007, 1008, 1052	08/27/08	AMEND: 300
10/16/08	AMEND: 1081	08/25/08	ADOPT: 27.32 AMEND: 27.20(f), 27.25, 27.30, 28.26, 28.27, 28.28, 28.29, 28.48, 28.49, 28.51, 28.52, 28.53, 28.54, 28.55, 28.56, 28.57, 28.58
10/14/08	AMEND: 1005	08/18/08	AMEND: 749.3
10/02/08	AMEND: 1003, 9040, 9041, 9073(b)	08/14/08	ADOPT: 3950, 3951, 3952, 3953, 3954, 3955, 3956, 3957, 3958, 3959, 3960, 3961, 3962, 3963, 3964, 3965
10/02/08	AMEND: 1081	08/12/08	ADOPT: 124
09/23/08	ADOPT: 44.3	08/11/08	AMEND: 503
07/08/08	ADOPT: 30.14	08/06/08	AMEND: 815.05, 818.02, 825.05, 827.02
06/17/08	AMEND: 1005, 1007, 1008, 1080	07/28/08	AMEND: 702
<b>Title 13</b>		07/23/08	AMEND: 7.50
11/03/08	AMEND: 25.06, 25.07, 25.08, 25.09, 25.10, 25.14, 25.15, 25.16, 25.17, 25.18, 25.19, 25.20, 25.21, 25.22	07/15/08	ADOPT: 4860
10/20/08	ADOPT: 346.00, 346.02, 346.04, 346.06, 346.08, 346.10, 346.12, 346.14, 346.16	07/08/08	ADOPT: 124.1 AMEND: 122, 125, 149.1, 150, 150.02, 150.03, 150.05, 163, 163.5, 164, 174, 180.3
10/07/08	AMEND: 935	07/02/08	AMEND: 7.50
10/02/08	AMEND: 423.00	07/01/08	AMEND: 27.80
10/02/08	AMEND: 15.00, 15.03	06/30/08	AMEND: 120.7
09/08/08	AMEND: 2449	06/23/08	AMEND: 18660.23, 18660.24, 18660.25, 18660.33, 18660.34
08/29/08	ADOPT: 2260(a)(0.5), 2260(a)(0.7), 2260(a)(6.9), 2260(a)(7.5), 2260(a)(8.5), 2260(a)(10.5), 2260(a)(10.7), 2260(a)(19.7), 2260(a)(19.8), 2260(a)(23.5), 2260(a)(23.7), 2260(a)(37), 2260(a)(38), 2260(a)(39), 2262.3(d), 2264.2(a)(3), 2264.2(b)(5), 2264.2(d), 2265(c)(4), 2265.1, 2265.5, 2266(b)(3), 2266(b)(4), 2266(b)(5) AMEND: 2261, 2262, 2262.3, 2262.4, 2262.5, 2262.9, 2263, 2263.7, 2264.2, 2265, 2266, 2266.5, 2270, 2271, 2273	06/20/08	AMEND: 360, 361, 362, 363, 364, 551, 708, 712
08/13/08	ADOPT: 619.2 AMEND: 615, 615.1, 616, 617, 618, 619, 619.1	06/18/08	ADOPT: 355
07/15/08	AMEND: 440.04	06/16/08	AMEND: 10602, 10800
06/16/08	ADOPT: 156.01	<b>Title 15</b>	
06/16/08	AMEND: 1961, 1965	10/30/08	AMEND: 3000, 3375, 3376.1, 3379
06/10/08	AMEND: 2222	10/28/08	ADOPT: 3999.7
<b>Title 13, 17</b>		10/23/08	ADOPT: 1417 AMEND: 1029, 1206, 1248, 1357, 1358, 1461
10/20/08	ADOPT: 2299.5, 93118.5	10/15/08	ADOPT: 3999.6
07/02/08	AMEND: 2299.1, 93118	09/15/08	ADOPT: 3269
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10/30/08	AMEND: 29.85	08/29/08	AMEND: 3000, 3261.1, 3261.2, 3261.4, 3261.5, 3261.7, 3267
10/23/08	AMEND: 163, 164	08/04/08	AMEND: 2041
10/22/08	AMEND: 1052.4	08/04/08	AMEND: 3000, 3005, 3006, 3008, 3009, 3011, 3012, 3013, 3015, 3016, 3290, 3310, 3313, 3314, 3315, 3317, 3318, 3320, 3323, 3327, 3328
10/21/08	AMEND: 15387 Appendix C	07/30/08	ADOPT: 3503, 3505, 3506, 3507, 3508, 3509, 3510, 3511, new Article 2 and title, 3520, 3521, 3521.1, 3521.2, 3521.3, 3521.4, 3521.5, 3521.6, 3522, 3523, 3524, 3525, 3526, 3527, new Article 3 and title, 3540, 3541, 3542, 3543, 3544,
10/09/08	AMEND: 791, 791.7, 795		
09/22/08	AMEND: 4900 REPEAL: 4901, 4902, 4903, 4904		
09/15/08	AMEND: 502		

3545, 3546, 3547, 3548, 3549, new Article 4 and title, 3560, 3561, 3562, 3563, 3564, new Article 5 and title, 3570, 3571, new Article 6 and title, 3580, 3581, 3582, new Article 7 and title, new Article 8 and title, new Article 9 and title, new Article 10 and title, new Article 12 and title, 3640, new Article 13 and title, 3650, 3651, 3652, 3652.1, 3653, 3654, new Article 14 and title, 3700, 3701, 3702, 3703, 3704, 3705, 3706, 3707, new Article 15 and title, 3720, 3721, 3721.1, 3722, 3723, new Article 16 untitled, 3730, new Article 17 and title, new Article 18 and title, 3750, 3751, 3752, 3753, 3754, 3755, 3756, new Article 19 and title, 3760, 3761, 3762, 3763, 3764, 3765, 3766, new Article 20 and title, 3770, 3771, and 3772. AMEND: 3604, 3605, 3605.5, 3701.1, 3705, 3706, 3801, 3802, renumber old Article 2 with title, and 3815.	08/07/08	AMEND: 4161
	07/30/08	AMEND: 2649
	07/23/08	AMEND: 1399.152.2, 1399.153, 1399.153.3
	07/18/08	AMEND: 134 REPEAL: 135
	07/09/08	ADOPT: 1984
	07/08/08	AMEND: 1399.540
	07/03/08	AMEND: 1568
	07/02/08	AMEND: 390, 390.1, 390.3, 390.4, 390.5, 390.6 REPEAL: 390.2
	06/30/08	ADOPT: 119.7
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	06/17/08	ADOPT: 4580
	06/16/08	ADOPT: 4400, 4402, 4404, 4406, 4420, 4422, 4424, 4426, 4428, 4500, 4520, 4522, 4540, 4542, 4560, 4562
	06/11/08	REPEAL: 1399.664
	06/04/08	AMEND: 931
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	10/30/08	AMEND: 100407, 100408
	09/24/08	AMEND: 52082, 56103, 56104, 58670
07/17/08	09/18/08	ADOPT: 94800, 94801, 94802, 94803, 94804, 94805, 94806, 94807, 94808, 94809, 94810
	09/05/08	ADOPT: 98100 REPEAL: 96100
07/14/08	08/06/08	AMEND: 94006
	07/14/08	AMEND: 57310, 57332
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	07/08/08	AMEND: 95005
	07/02/08	AMEND: 2299.1, 93118
07/08/08	06/12/08	ADOPT: 94016, 94168 AMEND: 94010, 94011
06/23/08		
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	10/30/08	AMEND: 1399.571
	10/17/08	ADOPT: 1399.610, 1399.612 AMEND: 1399.502
	10/07/08	AMEND: 832.47
	10/02/08	AMEND: 3351.2
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	09/10/08	ADOPT: 1028.2, 1028.3, 1028.4, 1028.5 AMEND: 1021
	08/27/08	AMEND: 2250 REPEAL: 2274, 2277
	08/25/08	AMEND: 1399.480, 1399.481, 1399.482, 1399.483, 1399.484, 1399.485, 1399.486, 1399.487, 1399.488, 1399.489, 1399.489.1
	08/15/08	AMEND: 1361
	08/13/08	AMEND: 3394.6
	08/12/08	AMEND: 3394.4
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	09/24/08	AMEND: 1574
	09/24/08	AMEND: 1599
	08/11/08	AMEND: 1807, 1828
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	07/16/08	AMEND: 5216, 5310, 5311, 5326.4, 5326.6, 5333, 5333.4, 5333.6, 5523.4
	06/23/08	AMEND: 19503
	06/10/08	ADOPT: 2558, 2559, 2559.1, 2559.3, 2559.5
	06/04/08	AMEND: 23038(b)-2, 23038(b)-3
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	09/24/08	AMEND: 560
	09/24/08	AMEND: 906.3
	08/07/08	ADOPT: 1980.00, 1980.01, 1980.02, 1980.03, 1980.04, 1980.05, 1980.06, 1980.07, 1990.00, 1990.01, 1990.02, 1990.03, 1990.04, 1990.05, 1990.06, 1990.07, 1990.08, 1990.09, 1990.10, 1990.11, 1990.12, 1990.13

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06/30/08	ADOPT: 111, 112, 113, 114, 121, 131, 132, 133, 134, 135, 136, 141, 151, 152, 153	ADOPT: 88054, 89318 AMEND: 80017, 83017, 83064, 83075, 84065, 84068.2, 84090, 84165, 84265, 86065, 86068.2, 86517, 88001, 88022, 88031, 88065.3, 88068.2, 88069.7, 89317, 89378, 89405
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10/28/08	AMEND: 87102, 87105	<b>Title 22, 27</b>
10/15/08	AMEND: 2051–3	07/07/08
09/26/08	AMEND: 3258–1, 3267–1, 3267–2	AMEND: Title 22, 67450.11; Title 27, Div. 3, subd. 1, Chapter 4C. and Chapter 6
08/07/08	AMEND: 51098.5, 51202.5, 51309.5, 51503.3	<b>Title 23</b>
06/26/08	AMEND: 100140, 100141, 100163, 100172, 100174	11/05/08
06/23/08	AMEND: 12805	10/22/08
06/17/08	ADOPT: 25000, 25102, 25103, 25104, 25201, 25203, 25204, 25301, 25302, 25303, 25304, 25305, 25306, 25401, 25403, 25405, 25501, 25502, 25503, 25504, 25505, 25601, 25701, 25703, 25705, 25707, 25709, 25711, 25713, 25721, 25801, 25803, 25805, 25821, 25900, 25901, 25902, 25903, 27000, 28001, 28002, 28003, 28004, 28006, 28007, 28008, 28009, 28010, 28011, 28012, 28013, 28014, 28015, 28016, 28017, 28018, 28019, 28020, 28021, 28022, 28023, 28024, 28025, 28026, 28027, 28028, 28029, 28030, 28031, 28032, 28033, 28034, 28035, 25036, 28037, 28038, 28039, 28040 REPEAL: 12000, 12102, 12103, 12104, 12201, 12203, 12204, 12301, 12302, 12303, 12304, 12305, 12306, 12401, 12403, 12405, 12501, 12502, 12503, 12504, 12505, 12601, 12701, 12703, 12705, 12707, 12709, 12711, 12713, 12721, 12801, 12803, 12805, 12821, 12900, 12901, 12902, 12903, 14000, 15001, 15002, 15003, 15004, 15006, 15007, 15008, 15009, 15010, 15011, 15012, 15013, 15014, 15015, 15016, 15017, 15018, 15019, 15020, 15021, 15022, 15023, 15024, 15025, 15026, 15027, 15028, 15029, 15030, 15031, 15032, 15033, 15034, 15035, 15036, 15037, 15038, 15039, 15040	AMEND: 1062, 1064, 1077, 3833.1
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	06/26/08	ADOPT: 40-037, 70-101, 70-102, 70-103, 70-104, 70-105 AMEND: 30-755, 30-770, 40-105, 42-430, 42-431, 42-433, 42-711, 49-020, 49-030, 49-060, 63-403, 69-201, 69-202, 69-205	
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